109TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 109–728
Part 1

WORKPLACE GOODS JOB GROWTH AND COMPETITIVENESS ACT OF 2006

DECEMBER 8, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3509]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3509) to establish a statute of repose for durable goods used in a trade or business, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Workplace Goods Job Growth and Competitiveness Act of 2006".

SEC. 2. STATUTE OF REPOSE FOR DURABLE GOODS USED IN A TRADE OR BUSINESS.

(a) IN GENERAL.—Except as otherwise provided in this Act—

(1) no civil action may be filed against the manufacturer or seller of a durable good for damage to property allegedly caused by that durable good if the damage to property occurred more than 12 years after the date on which the durable good was delivered to its first purchaser or lessee; and

(2) no civil action may be filed against the manufacturer or seller of a durable good for damages for death or personal injury allegedly caused by that durable good if the death or personal injury occurred more than 12 years after the date on which the durable good was delivered to its first purchaser or lessee and if—

(A) the claimant has received or is eligible to receive worker compensation; and

(B) the injury does not involve a toxic harm (including, but not limited to, any asbestos-related harm).

(b) EXCEPTIONS.—

(1) IN GENERAL.—A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this Act.

(2) CERTAIN EXPRESS WARRANTIES.—This Act does not bar a civil action against a defendant who made an express warranty in writing, for a period of more than 12 years, as to the safety or life expectancy of a specific product, except that this Act shall apply at the expiration of that warranty.

(3) AVIATION LIMITATIONS PERIOD.—This Act does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(4) ACTIONS INVOLVING THE ENVIRONMENT.—Subsection (a)(1) does not supersede or modify any statute or common law that authorizes an action for civil damages, cost recovery, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(5) REGULATORY ACTIONS.—This Act does not affect regulatory enforcement actions brought by State or Federal agencies.

(6) ACTIONS INVOLVING FRAUDULENT CONCEALMENT.—This Act does not bar a civil action against a manufacturer or seller of a durable good who fraudulently concealed a defect in the durable good.

(c) EFFECT ON STATE LAW; PREEMPTION.—Subject to subsection (b), this Act preempts and supersedes any State law that establishes a statute of repose to the extent such law applies to actions covered by this Act. Any action not specifically covered by this Act shall be governed by applicable State or other Federal law.

(d) TRANSITIONAL PROVISION RELATING TO EXTENSION OF REPOSE PERIOD.—To the extent that this Act shortens the period during which a civil action could otherwise be brought pursuant to another provision of law, the claimant may, notwithstanding this Act, bring the action not later than 1 year after the date of the enactment of this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) CLAIMANT.—The term "claimant" means any person who brings an action covered by this Act and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which—

(A)(i) has a normal life expectancy of 3 or more years; or

(ii) is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986; and

(B) is—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(3) FRAUDULENTLY CONCEALED.—With respect to a durable good, the term "fraudulently concealed" means that—

(A) the manufacturer or seller of the durable good had actual knowledge of a defect in the durable good;

(B) the defect in the durable good was the proximate cause of the harm to the claimant; and

(C) the manufacturer or seller of the durable good affirmatively suppressed or hid, with the intent to deceive or defraud, the existence of such defect.

(4) SELLER.—The term "seller" means any dealer, retailer, wholesaler, or distributer in the stream of commerce of a durable good concluding with the sale or lease of the durable good to the first end-user.

(5) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, any other territory or possession of the United States, and any political subdivision of any of the foregoing.

SEC. 4. EFFECTIVE DATE; APPLICATION OF ACT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act without regard to whether the damage to property or death or personal injury at issue occurred before such date of enactment.

(b) APPLICATION OF ACT.—This Act shall not apply with respect to civil actions commenced before the date of the enactment of this Act.

PURPOSE AND SUMMARY

The "Workplace Goods Job Growth and Competitiveness Act of 2006" is premised on the notion that a product which is used safely for a substantial period of time is not likely to be defective at the time of manufacture, sale, or delivery. Thus any injury it causes after some reasonably long period of time is likely to have been due to either misuse or improper maintenance by someone other than the manufacturer. However, the passage of time makes it more difficult to disprove the existence of a defect at the time of manufacture. Memories of witnesses fade after several years, evidence is difficult to retrieve and past employees and managers are not easy to track down. Although manufacturers often win cases based on injuries from old products, the litigation costs of defending these cases may be enormous and can divert resources from job creation, research and development.

H.R. 3509 addresses this problem by creating a uniform federal statute of repose for cases involving injuries caused by workplace durable goods. This statute of repose would bar a cause of action against the manufacturer of such a product after 12 years from the date the product was placed in the stream of commerce, regardless of when the injury occurred.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 3509 is intended to eliminate the economic inefficiency of litigation that seeks to hold manufacturers of durable goods [1] liable for harms caused by machinery they have not controlled for over twelve years. Manufacturers almost always prevail in such litigation when they go to trial, but costs associated with defending the design of machines produced a decade or more ago are often enormous. Knowledgeable personnel have often retired, died or changed jobs, and design and production records have often been lost. Without careful explanation, old machinery may appear poorly designed when measured against modern counterparts, even if "ultra-modern" at the time of sale. Misuse or alteration of the machine, disabling or removal of safety devices, or failure to properly train workers often do not provide a defense at trial.[2] The result is a great incentive for manufacturers to settle even the weakest cases, so long as the settlement is less than or approximately equivalent to the defense costs.[3]

A recent survey of machine tool manufacturers reveals the magnitude of transaction costs involving litigation over these older

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[1] Durable goods are defined as those which (1) have a normal life expectancy of at least 3 years or are of a character subject to allowance for depreciation under the Internal Revenue Code, and (b) are used in a trade or business, held for the production of income, or sold or donated to a governmental or private entity for production of goods, training, demonstration, or any similar purpose. H.R. 3509, 109th Cong. § 3(2) (2006).

[2] In many jurisdictions, a subsequent owner's contributory fault in altering a machine cannot be used as a defense by the machine manufacturer. See, e.g., Alm v. Aluminum Co. of America, 687 S.W. 2nd 374, 381–82 (Tex. App. 1985) (the fact that the bottler-employer was responsible for creating risk by its failure to properly maintain capping machines did not preclude holding the designer of the machines liable for negligence), aff'd in part, 717 S.W.2d 588 (Tex. 1986).

[3] See Legislative Hearing on H.R. 3509, "The Workplace Goods Job Growth and Competitiveness Act of 2005," Hearing Before the Subcomm. on Comm. Admin. Law, 109th Cong. 8 (2006) (statement of Elizabeth Sitterly, Legal Counsel, Giddings & Lewis LLP) ("Honestly, given the nature of injuries sustained on machine tools, I am hard pressed to take a case to trial.").

products. Twenty-five percent of respondents in an Association for Manufacturing Technology (AMT) survey reported having claims filed against them in 2005.[4] None of the claims that year reached trial. Fifty percent of the claims were dropped without any payment of the award; the other 50 percent of the claims were settled for an average of $146,100.[5]

Little of the overall costs incurred by defendants in these cases went to the injured claimant. For every 100 claims, about $10.4 million was spent by manufacturers.[6] Of this total, $5.1 million was spent on defense costs, and another $2.3 million was spent on subrogation to employers or their insurance companies to reimburse them for money already paid to employees under worker compensation laws (even if the employer was primarily at fault).[7] Claimants (those who are actually hurt in workplace accidents) only receive $3 million of the money spent on these claims, and, of that amount, approximately one-third goes to their lawyers. According to the survey, a 12-year statute of repose would have barred 84 percent of AMT members' closed and pending cases, resulting in a savings of approximately $6.4 million over the same 100 claims.[8]

These statistics demonstrate three crucial facts:

- The magnitude of the transaction and subrogation costs imposed on the durable goods manufacturing industry is substantial in absolute terms and in relation to the overall revenues and profits of the machine tool industry;
- The amount of money that ends up with lawyers, employers, and insurance companies in these cases far outweighs the amount that goes to claimants themselves;
- Barring cases involving durable goods over 12 years after initial sale or lease would eliminate 84 percent of the cases and save millions of dollars in transaction costs. These cases are clearly the least productive for claimants and the most costly to defend. Their value to society and the economy is minimal at best.

Tort costs and competitiveness

Product liability costs are like any other costs that manufacturers must take into account when pricing a product. In the United States, product liability costs are staggering. According to a Tillinghast survey released on March 14, 2006, U.S. tort costs reached a record $260 billion in 2004, or approximately $886 per person.[9] That same survey shows that our foreign competitors' product liability costs are significantly lower than those of U.S. firms. Steve Lowe, leader of Tillinghast's global insurance consulting practice said "tort costs in the U.S. far surpass those of the other countries we examined, partly [as] a result of different health

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[4] Legislative Hearing on H.R. 3509, "The Workplace Goods Job Growth and Competitiveness Act of 2005," Hearing Before the Subcomm. on Comm. & Admin. Law, 109th Cong. 22 (2006) (statement of James H. Mack, Vice President of Tax and Economic Policy, AMT—Association for Manufacturing Technology).

[5] *Id.*

[6] *Id.* at 23.

[7] *Id.*

[8] *Id.*

[9] Tillinghast-Towers Perrin, U.S. Tort Costs and Cross-Border Perspectives: 2005 Update 4 (2006) (available at http://www.towersperrin.com/tp/getwebcachedoc?webc=TILL/USA/2006/200603/2005__Tort.pdf).

care systems and legal systems. However, this difference may raise the issue of competitiveness of U.S. products in a global marketplace." [10]

According to a December 2003 study by the National Association of Manufacturers, American manufacturers have costs 22 percent higher than their foreign competitors, of which 3.2 percent of the overall percentage increase was due to U.S. legal costs.[11] One of the reasons for the cost discrepancy between U.S. manufacturers and foreign competitors is that our international competitors all have the benefit of statutes of repose for manufactured goods. For example, the European Union, Japan, South Korea, and Australia all have 10 year statutes of repose. Therefore, manufacturers in those countries are able to pass on the cost savings from the liability protections they enjoy in their home market to consumers in this country, where they compete against U.S. manufacturers who do not have the same liability protections.

While foreign companies that export to the U.S. are subject to U.S. tort law, the preponderance of foreign capital imports into the U.S. have occurred within the last 25 years. As a result, American manufacturers' foreign competitors do not have the exposure of thousands of older machines present in the U.S. market, nor are they exposed to the same open-ended product liability exposure that U.S. manufacturers face.

Statutes of repose and product liability reform

To combat this problem, manufacturers have promoted the use of a statute of repose to limit the duration of their liability exposure.[12] Statutes of repose have been enacted in a number of States, under State law, to counter the long tail of liability that American manufacturers must shoulder. Approximately a dozen States currently have a statute of repose for products, and among those States the clear consensus is that the period of repose should be 12 years or less.[13] Another seven States have a so-called "soft" statute of repose that extends for the useful life of the covered product.[14] However, as manufacturers sell goods in all fifty states, a na-

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[10] Press Release, Tillinghast-Towers Perrin, U.S. Tort Costs Reach a Record $260 Billion According to Tillinghast Study (March 2006) (available at http://www.towersperrin.com/tp/jsp/tillinghast__webcache__html.jsp?webc=Tillinghast/United__States/Press__Releases/2006/20060313/2006__03__13.htm&selected=press).

[11] National Association of Manufacturers, How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness (2003) (available at http://www.nam.org/s__nam/bin.asp?CID=201715&DID=227525&DOC=FILE.PDF).

[12] *See, id.,* at 280–284.

[13] *See, e.g.,* COLO. REV. STAT. ANN. § 13–80–107 (seven year statute of repose on manufacturing equipment); CONN. GEN. STAT. ANN. § 52–577a (ten year statute of repose on manufacturing equipment); GA. CODE ANN. § 51–1–11 (ten year statute of repose for products); 735 ILL. COMP. STAT. ANN. 5/13–213 (12 year statute of repose for products); IND. CODE § 34–20–3–1 (ten year statute of repose for products); IOWA CODE ANN. § 614.1(2A) (fifteen year statute of repose for products); NEB. REV. STAT. ANN. § 25–224 (ten year statute of repose for products); N.C. GEN. STAT. ANN. § 1–50(a)(6) (six year statute of repose for products); OR. REV. STAT. § 30.905 (ten year statute of repose for products); TENN. CODE ANN. § 29–28–103 (ten year statute of repose for products); and TEX. CIV. PRAC. & REM. CODE ANN. § 16.012 (fifteen year statute of repose for products).

[14] *See, e.g.,* IDAHO CODE ANN. § 6–1403(2) (creating a rebuttable presumption that the "useful life" of the product is 10 years); ARK. CODE ANN. § 16–116–105 (use of a product beyond its anticipated useful life can be used as evidence of fault on part of consumer); KAN. STAT. ANN. § 60–3303(b) (creating a rebuttable presumption that the "useful life" of the product is 10 years); KY. REV. STAT. ANN. § 411.310(1) (creating a rebuttable presumption that product was not defective if the injury occurs more than 5 years after first purchased by user or 8 years after it was first manufactured); MICH. COM. LAWS ANN. § 600.5805(13) (plaintiff must prove prima facie case without benefit of any presumptions if injured by product over 10 years old); and WASH. REV.

Continued

tional statute of repose is needed to effectively address their liability exposure.

Congress has considered and enacted a national statute of repose before. In 1994, Congress responded to concerns that the liability of small aircraft manufacturers was leading to the demise of that industry in the United States by passing the General Aviation Revitalization Act (GARA)[15], creating an 18-year statute of repose to manufacturers of small non-commercial aircraft.[16] That Act is widely credited with reviving the general aircraft business in America without compromising safety.[17]

Congress has also federalized a number of other State causes of action when the circumstances have proven amenable.[18] Significantly, in the 106th Congress, the House passed a predecessor bill, H.R. 2005, which had an 18-year statute of repose, by a vote of 222–194 on February 2, 2000.[19]

Statutes of repose and federalism

Because manufacturers of durable goods sell their products across State lines, out-of-State manufacturers often bear the brunt of litigation initiated by local claimants. Faced with these circumstances, State legislatures have difficulty effectively balancing the interests of manufacturers and claimants. The resulting disparity in State laws encourages forum-shopping, with unpredictable and inequitable results for claimants and defendants alike.

Moreover, some State statutes of repose have been struck down under State constitutional provisions that guarantee a "right to a remedy," a provision that has no counterpart in the United States Constitution. This has led some courts to refuse to apply even the statute of repose of another State when standard choice-of-law rules would apply the law of the place of the injury.[20]

Finally, these varied State-by-State enactment of statutes of repose do not reduce durable good product liability insurance rates in the way a uniform national statute of repose would. Durable goods manufacturers typically ship the vast majority of their products out of State, so insurance carriers are unable to predict potential liability accurately. This difficulty in determining liability is due to uncertainty about where the durable good will be sold initially and where it will eventually end up when resold. When insurers set liability rates, they must account for the worst case scenario, which drives up rates even for durable goods manufacturers in States that have enacted statutes of repose.

CODE ANN. § 7.72.060(2) (creating a rebuttable presumption that the "useful life" of the product is 12 years).

[15] Pub. L. 103–298.

[16] See Lyon v. Agusta S.P.A., 252 F3.3d 1078, 1085–1088 (9th Cir. 2001) (holding that the 18-year statute of repose does not violate the Due Process Clause of the 5th Amendment).

[17] See Victor E. Schwartz & Mark A. Behrens, A Proposal for Federal Product Liability Reform in the New Millennium, 4 Tex. Rev. L. & Pol. 261, 280–284 (2000); James F. Rodriguez, Note, Tort Reform & GARA: Is Repose Incompatible With Safety?, 47 Ariz. L. Rev. 577, 598–602 (2005) (noting that general aviation manufacturing employment increased by 25,000 in the five years after passage of GARA).

[18] *See, e.g.,* Volunteer Protection Act of 1997, Pub. L. 105–19 (1997); Y2K Act, Pub. L. 106–37 (1999); and Protection of Lawful Commerce in Arms Act, Pub. L. 109–92 (2005).

[19] 146 CONG. REC. H183–84 (daily ed. Feb. 2, 2000).

[20] *See, e.g.,* Sharp v. Case Corp., 573 N.W.2d 899 (Ct. of Appeals, Dist. 2, 1997) ("The policy of Wisconsin's tort law is to provide full compensation to persons who are injured by negligent conduct and to deter such conduct by imposing the full monetary consequences on the tortfeasor." If [the] Oregon [statute of repose] applied, these policies would not be fulfilled."), aff'd on other grounds, 595 N.W.2d 380 (1999).

H.R. 3509 is tailored to address the liability vulnerability of U.S. manufacturers and to level the playing field with foreign competitors

H.R. 3509 represents a narrowly formulated statute of repose. Because the death and personal injury section of the bill is limited to cases where the claimant is eligible for worker compensation, H.R. 3509 ensures that no claimant will ever go empty-handed.[21] Contrary to the assertions by some opponents, worker compensation is not a stingy remedy. In most States, worker compensation benefits include not only all medical, rehabilitation expenses and wage replacement (for life in the case of permanent injuries), but also "scheduled payments" for designated injuries, such as loss of use of limbs, hands, or serious disfigurement. These scheduled payments are designed to be a functional substitute for "pain and suffering" awards in court litigation.

The Act respects warranty periods on durable goods, ensuring that purchasers will continue to obtain the benefit of their negotiated bargains with durable good manufacturers or sellers.[22] In the event that the product's warranty period is longer than 12 years, the Act will allow suit to be filed until the conclusion of the warranty period. It also takes into consideration the fact that some injuries may be caused by a durable good within the 12-year period of repose, but because of their nature, will not manifest themselves for many years after the exposure to the product. In recognition of the unfairness that a statute of repose might work on a claimant harmed by such "latent" injury, H.R. 3509 does not apply to personal injury or wrongful death claims where the injury involves a toxic harm.[23]

As a practical matter, the design and construction of a machine to function smoothly for 12 years is effectively an effort to design and construct a machine to last as long as technically possible. Competitive market pressures further encourage manufacturers to design and build the best possible durable goods. Imposing a strict statute of repose for these products will provide no incentive for manufacturers to design or produce an inferior product, because they would be fully subject to suit for those products for the first 12 years of its life.

In sum, H.R. 3509 provides a balanced solution to the problem of open-ended and often debilitating liability exposure by U.S. firms, while protecting a claimant's right to bring suit for injuries incurred during the repose period. It places a reasonable outer time limit on litigation involving older products used in the workplace, where injured claimants will have recourse to benefits from the worker compensation system.

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held a legislative hearing on H.R. 3509 on March 14, 2006. Ms. Elizabeth Sitterly, Legal Counsel to Giddings & Lewis, a Division of Cincinnati Manufacturing; Mr. Kevin P. McMahon, Partner at Nelson, Mullins, Riley & Scarborough, testifying on be-

[21] H.R. 3509, 109th Cong. § 2(a)(2)(A).
[22] *Id.* § 2(b)(2).
[23] § 2(a)(2)(B).

half of the National Association of Manufacturers; and Mr. James H. Mack, Vice President of Economic and Tax Policy at AMT—The Association for Manufacturing Technology—testified in favor of the bill. Professor Andrew F. Popper of the American University Washington College of Law testified in opposition to the bill.

COMMITTEE CONSIDERATION

On March, 29, 2006 and July 19, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 3509 with an amendment by a recorded vote of 21 yeas to 12 nays, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the committee's consideration of H.R. 3509.

1. An amendment was offered by Ranking Member Conyers that would eliminate the protections of the Act for any manufacturer who moved jobs from the United States to another country. The amendment failed by a vote of 12 yeas to 16 nays. Date: March 29, 2006.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller			
Mr. Issa			
Mr. Flake			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson-Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Ms. Sanchez	X		
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	16	

2. An amendment was offered by Rep. Scott that would eliminate the protections of the Act for any manufacturer that acted willfully, recklessly, or with wanton disregard for the plaintiff's safety. The amendment failed by a vote of 14 yeas to 15 nays. Date: March 29, 2006.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith			
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Mr. Flake			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson-Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez	X		
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	14	15	

3. An amendment was offered by Rep. Jackson-Lee that would eliminate the protections of the Act for any manufacturer that did

not pay a minimum wage of at least $7.25 per hour. The amendment failed by a vote of 15 yeas to 20 nays. Date: July 19, 2006.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green			
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson-Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez	X		
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	15	20	

4. An amendment was offered by Rep. Waters that would eliminate the protections of the Act in any case in which an employee is injured by a machine that he was required to operate by his employer. The amendment failed by a vote of 15 yeas to 20 nays. Date: July 19, 2006.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson-Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez	X		
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
TOTAL	15	20	

5. Motion to report H.R. 3509 favorably as amended was agreed to by a vote of 21 yeas to 12 nays. Date: July 19, 2006.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson-Lee			
Ms. Waters			
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sanchez		X	
Mr. Van Hollen		X	
Mrs. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman	X		
Total	21	12	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3509, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

AUGUST 30, 3006.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3509, the Workplace Goods Job Growth and Competitiveness Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Daniel Hoople (for federal costs), Melissa Merrell (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 3509—Workplace Goods Job Growth and Competitiveness Act of 2005

Summary: H.R. 3509 would limit the length of time manufacturers and sellers of durable goods would be liable for injury and damages resulting from the use of their products. Because only a handful of these cases are filed in the federal courts, CBO estimates that enacting this bill would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues.

H.R. 3509 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state liability laws. CBO estimates that the preemption would impose no costs on state, local, or tribal governments; therefore, the annual threshold established in UMRA would not be exceeded ($64 million in 2006, adjusted annually for inflation).

H.R. 3509 contains a private-sector mandate, as defined in UMRA, because it would prohibit certain property damage and personal injury lawsuits against manufacturers and sellers of durable goods. CBO estimates that the direct cost of complying with the mandate would fall below the annual threshold established by UMRA ($128 for private-sector mandates in 2006, adjusted annually for inflation).

Estimated cost to the Federal Government: Under current law, there is no uniform federal law establishing a statute of repose (the length of time after which a manufacturer is no longer liable) for durable goods, although at least 20 states have set such liability limits. H.R. 3509 would set the statute of repose for durable goods at 12 years past the first point of delivery. Under the bill, the statute would only apply in cases of death and personal injury where the claimant is not covered by worker compensation. It would not apply in cases where a manufacturer or seller fraudulently concealed a defect in a durable good, or where a written warranty had guaranteed the safety or life expectancy of the product beyond 12 years.

While some product liability cases are tried in federal court, the majority of those that could be covered under this bill are handled in state courts. CBO estimates that enacting H.R. 3509 would have no significant impact on the number of cases that would be referred to federal courts and, thus, would have no significant impact on the federal budget.

Estimated impact on state, local, and tribal governments: H.R. 3509 would establish that, in certain circumstances, a civil action may not be filed in any court after 12 years against the manufacturer or seller of certain durable goods. That provision would constitute a mandate as defined by UMRA because it would preempt state laws that have established different time periods for filing these types of civil suits. CBO estimates that this preemption would impose no costs on state, local, or tribal governments; therefore, the annual threshold established in UMRA would not be exceeded ($64 million in 2006, adjusted annually for inflation).

Creating a federal standard of liability in these cases may affect the ability of state, local, and tribal governments to recoup payments made for worker's compensation benefits from private indi-

viduals who file such suits. CBO expects any changes in those collections that result from this bill's enactment would be small.

Estimated impact on the private sector: H.R. 3509 would impose a private-sector mandate by prohibiting certain property damage and personal injury lawsuits against manufacturers and sellers of durable goods as defined in the bill. Generally, the bill would prevent firms and individuals from recovering damages in cases where the accident involving a durable good occurred more than 12 years after that good was delivered to its first purchaser or lessee. The mandate would not affect existing claims or claims filed within one year of enactment. The bill also would provide exceptions to the prohibition for claims involving certain passenger vehicles and general aviation aircraft and claims involving manufacturer warranties.

The cost of the mandate for an affected firm or individual would be the forgone net value of awards and settlements they would otherwise receive under current law. Based on information from industry sources regarding such awards and settlements, CBO estimates that the direct cost of complying with the mandate would fall below the annual threshold established by UMRA ($128 for private-sector mandates in 2006, adjusted annually for inflation).

Estimate prepared by: Federal costs: Daniel Hoople. Impact on State, local, and tribal governments: Melissa Merrell. Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3509 will reduce the effects of long tail liability on American manufacturers by enacting a nationwide statute of repose of 12 years on workplace durable goods. This reduction in long tail liability will make American manufacturers more competitive against foreign manufacturers who enjoy similar statutes of repose in their home jurisdictions.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Section 1. Short title

This section states that this Act may be cited as the "Workplace Goods Job Growth and Competitiveness Act of 2006."

Section 2. Statute of repose for durable goods used in a trade or business

Subsection 2(a) sets out the basic rule of the statute of repose that no civil action arising out of an accident involving a durable good may be filed against a manufacturer or seller of a durable

good more than 12 years after it was delivered to its first purchaser or lessee. In the case of death or personal injury claims, the scope of the bar is limited to circumstances where (A) the claimant has received or is eligible to receive worker compensation, and (B) the injury does not involve a toxic harm.

The bill specifies that "toxic harm" includes, but is not limited to, all asbestos-related harm. The "toxic harm" exclusion is intended to cover all claims involving asbestos and other latent diseases; that is, diseases that do not manifest themselves for many years after the ingestion, inhalation, or absorption of the toxic substance.

Subsection 2(b) sets out five exceptions where the Act does not apply: (1) where the injury involves a motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire; (2) where the durable good has been warranted by the manufacturer as to safety or life expectancy for a period longer than 12 years (in which case suit may be brought until the expiration of the warranty period); and (3) where the case is governed by the limitations period in the General Aviation Revitalization Act. At markup, the Committee adopted two other exceptions to the Act. The first clarifies that it does not apply to State or Federal regulatory enforcement actions. The second exception is for cases where the manufacturer or seller of a durable good fraudulently concealed a defect in the durable good.

Subsection 2(c) specifies that the Act preempts and supersedes any State law that establishes a statute of repose for actions covered by the Act. This subsection establishes a uniform national repose period longer than that of all but three existing State laws with fixed-time statutes of repose. Thus, all the current statutes of repose governing durable goods will be superceded by the Act, giving claimants in those States an additional number of years in which to bring claims against the manufacturers and sellers of durable goods used in the workplace. Existing and future State statutes of repose will continue to apply to actions that are not covered by this Act, such as injuries or deaths involving durable goods where the claimant is not eligible for worker compensation or involving consumer goods.

Subsection 2(d) provides that if any provision of this Act would shorten the period during which a product liability action could otherwise be brought pursuant to another provision of law, the claimant may, notwithstanding this Act, bring an action within one year after the effective date of this Act. This transitional period is intended to protect a claimant who upon the date of enactment of the Act has already been injured by a workplace durable good, but has not yet filed suit on that claim. If the statute of limitation on that claim has not expired prior to the enactment date, the claimant would be granted the shorter of the limitation period or one year after enactment to file the claim, regardless of the age of the durable good which allegedly caused the injury.

Section 3. Definitions

"Claimant" is defined as any person who brings an action covered by this Act or on whose behalf such an action is brought, including an injured person's employer, insurance carrier or other subrogated

party, the estate of a decedent, and the guardian of a minor or incompetent person.

"Durable good" is defined as a product or component that meets two criteria: (a) it must have a normal life expectancy of at least 3 years or be of a character subject to allowance for depreciation under the Internal Revenue Code, and (b) it must actually be used in a trade or business, held for the production of income, or sold or donated to a governmental or private entity for production of goods, training, demonstration, or any similar purpose.

"Fraudulently Concealed" is defined to mean that the manufacturer or seller had actual knowledge of the defect which was the proximate cause of the claimant's harm and that the manufacturer or seller affirmatively suppressed or hid, with the intent to deceive or defraud, the existence of that defect.

"Seller" is defined as any dealer, retailer, wholesaler, or distributor in the stream of commerce of a durable good concluding with the sale or lease of the durable good to the first end-user.

"State" is defined as any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any of their political subdivisions.

Section 4. Effective date; application of act

The Act takes effect immediately upon enactment, regardless of whether the damage, death, or injury occurred before that date, except that it does not affect pending litigation.

CHANGES IN EXISTING LAW BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes H.R. 3509 makes no changes to existing law.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MARCH 29, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. Next up is H.R. 3509. I call the bill up for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3509, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 3509

To establish a statute of repose for durable goods used in a trade or business.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. CHABOT (for himself, Mr. HYDE, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To establish a statute of repose for durable goods used in a trade or business.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Workplace Goods Job Growth and Competitiveness Act of 2005".

SEC. 2. STATUTE OF REPOSE FOR DURABLE GOODS USED IN A TRADE OR BUSINESS.

(a) IN GENERAL.—Except as otherwise provided in this Act—

(1) no civil action may be filed against the manufacturer or seller of a durable good for damage

to property arising out of an accident involving that durable good if the accident occurred more than 12 years after the date on which the durable good was delivered to its first purchaser or lessee; and

(2) no civil action may be filed against the manufacturer or seller of a durable good for damages for death or personal injury arising out of an accident involving that durable good if the accident occurred more than 12 years after the date on which the durable good was delivered to its first purchaser or lessee and if—

(A) the claimant has received or is eligible to receive worker compensation; and

(B) the injury does not involve a toxic harm (including, but not limited to, any asbestos-related harm).

(b) EXCEPTIONS.—

(1) IN GENERAL.—A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this Act.

(2) CERTAIN EXPRESS WARRANTIES.—This Act does not bar a civil action against a defendant who made an express warranty in writing, for a period of more than 12 years, as to the safety or life expect-

ancy of a specific product, except that this Act shall apply at the expiration of that warranty.

(3) AVIATION LIMITATIONS PERIOD.—This Act does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(4) ACTIONS INVOLVING THE ENVIRONMENT.—Subsection (a)(1) does not supersede or modify any statute or common law that authorizes an action for civil damages, cost recovery, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(c) EFFECT ON STATE LAW; PREEMPTION.—Subject to subsection (b), this Act preempts and supersedes any State law that establishes a statute of repose to the extent such law applies to actions covered by this Act. Any action not specifically covered by this Act shall be governed by applicable State law.

(d) TRANSITIONAL PROVISION RELATING TO EXTENSION OF REPOSE PERIOD.—To the extent that this Act shortens the period during which a civil action could otherwise be brought pursuant to another provision of law, the claimant may, notwithstanding this Act, bring the action

not later than 1 year after the date of the enactment of this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this Act and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which—

(A)(i) has a normal life expectancy of 3 or more years; or

(ii) is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986; and

(B) is—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(3) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, any other territory or possession of the United States, and any political subdivision of any of the foregoing.

SEC. 4. EFFECTIVE DATE; APPLICATION OF ACT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act without regard to whether the damage to property or death or personal injury at issue occurred before such date of enactment.

(b) APPLICATION OF ACT.—This Act shall not apply with respect to civil actions commenced before the date of the enactment of this Act.

○

Chairman SENSENBRENNER. The Chair recognizes the sponsor of this legislation, the gentleman from Ohio, Mr. Chabot, for 5 minutes to explain the bill.

Mr. CHABOT. Thank you, Mr. Chairman.

As the author of the Workplace Goods Job Growth and Competitiveness Act, I wanted to say just a few words about the need for this type of liability reform.

American manufacturers of durable goods are constant targets for litigation over products that are decades old and have met all the safety standards when released into the market. The endless tale of liability puts U.S. manufacturers at a disadvantage to their foreign counterparts, who have only been in the U.S. market for the past few decades, and both the EU and Japan have 10-year statutes of repose.

Most often when these suits are brought to trial, defendant companies win. However, because it costs so much to litigate these claims, companies are often forced to settle within their insurance limits. In addition, industries like the machine tool industry must pay half of their litigation costs to defense lawyers. Claimants themselves see less than 30 percent of the monies paid out by the manufacturers, and that amount has been reduced by a third or more.

This bill will help save millions of dollars that would have otherwise been spent on these types of frivolous lawsuits. These resources could thus be used to compete in the global marketplace and thus create jobs not only in my district, but in districts all over this country.

I also want to highlight the three core aspects of this bill. Number one, H.R. 3509 imposes a nationwide statute of repose. This national standard will provide needed stability in the marketplace because these goods are not just sold in one place, but enter into the stream of commerce throughout the country. In addition, 38 States currently have no statute of repose, which encourages forum shopping among plaintiffs to find a friendly statute of repose State.

Secondly, because the bill would only apply to plaintiffs who are eligible to receive worker's compensation, no one will go uncompensated.

And third, 12 years is an adequate amount of time to test a product's viability without needlessly barring victims from the courthouse.

Since the 106th Congress I have worked to pass a national statute of repose for durable goods in the workplace, and back in the 106th Congress the legislation passed this Committee and then passed the House, and then later passed both bodies of Congress in product liability legislation that unfortunately was ultimately vetoed by President Clinton.

Since that time, a number of us have continued to work with national groups, like the National Association of Manufacturers, and small groups located in districts all over the country who continue to pay settlements in frivolous cases because it will cost more to defend the case than to settle.

Jobs in congressional districts all over the country are continually threatened by these lawsuits. In fact, back in 2001, a local company, Madison Grinder, was forced to close its doors after a product liability suit. The machine tool industry employs over 1,500

workers in just one district, mine, in Cincinnati, for example, but they are all over the country.

After the passage of several tort reform measures this year, I am pleased to see that we are once again highlighting the runaway litigation costs that businesses in our country face at the expense of the average consumer and at the expense of a loss of many jobs. Many people as a result of these lawsuits actually lose their jobs.

I want to thank Chairman Sensenbrenner in particular for the opportunity to bring this bill before the Committee for consideration.

I yield back the balance of my time.

And I will try to be brief in many of my responses if there are amendments, because I know some of our colleagues have other important markups that they have to attend to this morning.

Yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Well, wait till the working people of America hear about this measure. Here is a measure that preempts State law to establish a nationwide 12-year statute of repose for durable goods, taking away the rights of working families, the rights of their employers, even, and the rights of the States. It throws workers out of court even before the injury has occurred.

This is a measure that denies American workers injured or killed on the job adequate compensation for their injuries. It cuts off their legal rights to hold manufacturers accountable for injuries by a defective product that is more than 12 years old, regardless of how long the product was built to last and regardless of when the worker suffers the injury.

This measure, 3509, would provide that these workers would only have access to their State worker's compensation system, which typically only allows for lost wages and medical expenses, not loss of limb or permanent disfigurement and other forms of pain and suffering.

The bill unfairly singles out American workers, treating them differently from other injured persons. If an innocent bystander, who happens to be standing nearby, is injured by the same piece of machinery as the worker, under this measure the bystander can sue for lost wages, medical expenses, future lost wages, all forms of pain and suffering, loss of limb, and permanent disfigurement. Thus the bystander can receive full compensation, while the worker's recovery under this measure would be drastically limited. That is why working families are currently permitted under State law to sue the responsible third party, the manufacturer. This bill, however, illogically and most unfairly cuts off this right.

Employers will also suffer if this bill is enacted. They won't be able to recover for any property damage they suffer when older equipment fails and damages the workplace. Employers would no longer be able to recover funds paid to an injured employee through worker's compensation.

And finally, the bill raises federalism concerns because it could easily run afoul of the Commerce Clause limiting congressional authority to the regulation of interstate commerce, and the Tenth

Amendment, which reserves all of the enumerated powers to the States.

It is telling to me that in almost half of the States that have enacted statutes of repose, the State supreme courts have overturned them because they were found to violate State constitutional requirements relating to due process, equal protection, and open access to courts. Why should the Federal Government rush in to effect statutes of repose in States that have either declared them unconstitutional or determined that they do not need them?

Folks, we have more to do here than to impose this kind of legislation nationally. This bill is not about growth nor about competitiveness; it is about limiting the rights of American workers and their employers in a large way. And when they find out about it, we are all going to hear from them.

I urge my colleagues to resist this measure, and turn back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be placed in the record at this time. Are there amendments?

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio.

Mr. CHABOT. Mr. Chairman, I have a manager's amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3509——

Mr. CHABOT. Mr. Chairman, I ask unanimous the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. CHABOT OF OHIO

Page 1, line 5, strike ''2005'' and insert ''2006''.

Page 2, line 1, strike ''arising out of an accident involving'' and insert ''allegedly caused by''.

Page 2, line 2, strike ''accident'' and insert ''damage to property''.

Page 2, beginning on line 7, strike ''arising out of an accident involving'' and insert ''allegedly caused by''.

Page 2, line 8, strike ''the accident'' and insert ''the death or personal injury''.

Page 3, after line 14, add the following new paragraph:

''(5) REGULATORY ACTIONS.—This Act does not affect regulatory enforcement actions brought by State or Federal agencies.''.

Page 3, line 20, after ''State'' insert ''or other Federal''.

Page 5, after line 11, add the following new paragraph:

''(4) SELLER.—The term 'seller' means any dealer, retailer, wholesaler, or distributer in the stream of commerce of a durable good concluding with the sale or lease of the durable good to the first end-user.''.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. CHABOT. Thank you, Mr. Chairman. I will be brief.

I am introducing this manager's amendment to further clarify some of the aspects of the bill. The first change would streamline the language, Section 2(a)(1) and Section 2(a)(2) to avoid definitional questions regarding the phrase "arising out of an accident involving."

Second, in response to some concerns raised at the hearing on this bill a couple of weeks ago, the amendment would add a new exception to the bill that would clarify that the statute of repose does not apply to regulatory enforcement actions brought by State or Federal agencies.

Thirdly, the amendment would add a definition for the term "seller" to clarify that the protections of this bill do not apply to downstream re-sellers of used machinery.

And finally, the amendment would clarify that the bill does not preempt other Federal legal reforms and makes a technical change to the bill's title; to wit, it says "2005," it is now obviously 2006.

I urge my colleagues to accept this amendment and support the underlying measure.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I would be happy to yield.

Mr. SCOTT. I was trying to figure out Section 2, what it applied to. Section 2(a)(1) is just property damage. Number 2 is personal injury or death if you are covered by worker's compensation. If you are not—if you have two people injured in the same situation, one is an employee and one is an innocent bystander, do I understand that the bystander can still sue but the employee can't?

Mr. CHABOT. That is correct. You have to be covered by worker's compensation in order to receive the protections of this bill. So by definition, the person who is a bystander wouldn't be covered by worker's compensation. So he could still sue, or she.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. CHABOT. I yield.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Ohio, Mr. Chabot. Those in favor will say aye?

Opposed, no?

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments?

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3509 offered by Mr. Conyers of Michigan.

Page 3, after line 14, add the following new paragraph:

Offshoring of Jobs. In general, this Act does not bar a civil action against a manufacturer or seller that, on or after the date of the enactment of this Act——

Mr. CONYERS. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. CONYERS OF MICHIGAN

Page 3, after line 14, add the following new paragraph:

''(5) OFFSHORING OF JOBS.—

''(A) IN GENERAL.—This Act does not bar a civil action against a manufacturer or seller that, on or after the date of the enactment of this Act—

''(i) shifts or transfers employment positions or facilities to locations outside the United States in such a manner that results in an employment loss during any 30 day period for 15 or more employees, and

''(ii) does not provide adequate notice of such actions to its employees at least 90 days before taking such actions.

''(B) NOTICE.—The notice referred to in subparagraph (A) shall include information concerning—

''(i) the number of jobs affected;

''(ii) the location that the jobs are being shifted or transferred to; and

''(iii) the reasons that such shifting or transferring of jobs is occurring.''.

Chairman SENSENBRENNER. The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Members of the Committee, this is a very elementary amendment in that it would specify that the bill's protections do not apply to those companies that fail to provide even cursory notice to their workers, their own workers, that their jobs are about to be offshored to a foreign company or foreign workers. In other words, this is a requirement that notice be given when workers' jobs are about to be offshored.

In a more perfect world there would be a lot of other things that we could do to make this amendment work. But today I am merely proposing that we take the modest and common-sense first step: Give notice to workers so that they and their families can plan their futures. We already do this for plant closings, so there is not a reason I can think of that we should not do it for offshoring.

If we don't approve this amendment, we are, in a very real sense, adding insult to injury for American workers. First we tell them that they are second-class citizens when it comes to legal liability when they are harmed in the workplace. We will be placing them in an inferior position to consumers and others who are injured by simple negligence. But also, we will be saying to them that even if you lose your job to foreign offshoring after you have been forced to train your foreign counterpart to do your work, after you have lost your job in the middle of the night without any notice for you or your family to plan for your futures, that you may also have lost the ability to bring suit for workplace injuries.

So the proponents of this bill cannot talk about competitiveness. They claim this bill is needed because it is too difficult for U.S. firms to compete against foreign manufacturers. Well, what about the level playing field for the American worker? What about some basic fairness and dignity for them? That is what the amendment is all about.

We have just learned from the Office of Technology Assessment that they spent $335,000 and issued a 200-page report examining the effects of outsourcing. They refused to release the taxpayer-funded report to either the Congress or to this Committee or the American people. And yesterday, the majority, on a party-line basis, refused to even ask the Administration to turn this report over. I think this is insulting the interests of our workers.

Offshoring is a controversial subject. I know that some legislators believe it is a positive force in our economy, while others are more concerned about the impact on United States workers, their families, and their communities. But I hope we can all agree that, whatever its merits, those workers who are about to lose their jobs to offshoring are entitled to the decency and respect of some notice.

I urge that the author of this amendment and the Committee join me in this very modest step for workplace justice.

I return the balance of my time.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Thank you, Mr. Chairman. I rise in opposition to the amendment. I believe it is a bad idea because it would condition the appli-

cation of the bill on the employer's choice of where it does its production. It introduces a complicated set of factual determinations that would have to be pled and then proved in court, thus putting companies back in the position that they are today, which is facing massive defense costs for largely meritless litigation.

This amendment could cost jobs by creating an incentive for manufacturers to move their entire operations overseas because, in doing so, they would avoid entirely the liability the base bill would place within reasonable limits. This amendment is yet another command-and-control amendment that impairs the free market and will cost American jobs.

Even though I have the greatest respect for the gentleman from Michigan, I have to rise in opposition to this amendment.

I yield back the balance of my time.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you. I rise in support of this amendment, for several reasons.

First of all, the ostensible purpose—and, I am sure, the real purpose, although I don't think it will that purpose—but the purpose of this bill, we are told, is to try to save companies and to save American jobs. It is perfectly reasonable to say, hey, wait a minute—if the company is moving the jobs out of the country anyway, why give them this protection, whose sole purposes, presumably, is to save American jobs?

Now, I read recently that 56 percent, economists believe that 56 percent of all jobs in the United States today can be shipped to foreign countries and will be shipped to foreign countries if we don't change our policies in various ways over the next decade or so. Fifty-six percent of all American jobs.

We are told the way out of that is by more education, and yet the number of college graduates is increasing much faster than the number of jobs that require college degrees, for example. Because in fact increasingly, unless it is a service delivery job, everything—manufacturing, computer programming, what Secretary Rice used to call symbolic analysts, that would be our strength—is exportable. So we should do anything we can to try to stop the export of American jobs, and that certainly means passing the amendment offered by the gentleman from Michigan.

I would say that the bill as a whole is ill-conceived because, remember—statute of repose or no statute of repose—the only time there is liability is if you find, if the jury finds, if the court finds that the injury was caused by negligent manufacture on the part of the manufacturer. And the manufacturer should not be protected from that.

Now, we are told, of course, that the manufacturers of the durable good should be protected from the excessive cost of litigation—the companies can be destroyed by the cost of litigation whether they are guilty or innocent of the underlying charge. It is probably true, but I suggest that the energy of this Committee would be bet-

ter spent on figuring out how to lessen the cost of litigation so that middle-class people can afford to sue or be sued and have access to the courts so that small companies can afford to have access to justice and can afford to sue or be sued, rather than saying because litigation is so expensive, we are going to close the courthouse door to people who are injured. Which is what this bill does.

But if we are going to pass this bill, which we shouldn't do, the least we can do is tie it to say that the benefit of this bill, which is aimed, presumably, at saving American jobs, should not go to companies that are energetically exporting the jobs overseas. Otherwise, we might call this the Chinese or the British or the French or whoever job saving act. Which might be good for Parliament to pass, but not for this House.

I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Michigan, Mr. Conyers. Those in favor will say aye?

Opposed no? The noes barely have it.

Mr. CONYERS. rollcall, Mr. Chairman.

Chairman SENSENBRENNER. A record vote is requested. The question is on agreeing to the Conyers amendment. Those in favor will, as your names are called, answer aye. Those opposed, no. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH OF TEXAS. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

[No response.]

The CLERK. Mr. Hostetler?

[No response.]

The CLERK. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

[No response.]

The CLERK. Mr. Issa?

[No response.]

The CLERK. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson-Lee?
Ms. JACKSON-LEE. Aye.
The CLERK. Ms. Jackson-Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes—the gentleman from North Carolina, Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostetler.

Mr. HOSTETLER. No.

The CLERK. Mr. Hostetler, no.

Chairman SENSENBRENNER. Further Members? The gentleman from California, Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye.

Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their votes? If not, the clerk will report. The gentleman from South Carolina, Mr. Inglis?

Mr. INGLIS. Am I recorded?

The CLERK. No.

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no.

Chairman SENSENBRENNER. The clerk will try again to report. The gentleman from Florida, Mr. Feeney.

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no.

Mr. Chairman, there are 12 ayes and 16 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

A reporting quorum is present. The chair will take up the motion to report H.R. 3049, the Asian Carp bill, favorably. Those in favor of the motion to report the bill favorably will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to. Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental, or minority views.

Consideration will once again resume on the bill H.R. 3509. Are there further amendments?

Mr. SCOTT. I have an amendment.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk——

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCOTT. —designated "number one" in the upper right-hand corner.

The CLERK. Amendment to H.R. 3509 offered by Mr. Scott. Page three, after line 14, add the following new paragraph. Section 5: Willful, reckless, or wanton disregard for life or property. This Act does not bar——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. SCOTT

Page 3, after line 14, add the following new paragraph:

"(5) WILLFUL, RECKLESS, OR WANTON DISREGARD FOR LIFE OR PROPERTY.—This Act does not bar any civil action against a defendant for damage to property or damages for death or personal injury arising from the defendant's willful, reckless, or wanton disregard for life or property.".

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, this amendment would make the proposed period inapplicable to injury caused by willful, reckless, and wanton disregard for life, person, or property.

Mr. Chairman, manufacturers are in the best position to discover defects and recognize hazards that are likely to cause serious injury or death. An injured worker should not be barred from bringing a claim when injury has been caused because of the willful, reckless, or wanton disregard of a manufacturer on life, person, or property.

Mr. Chairman, many manufacturers may make willful, reckless, and wanton decisions not to repair, recall, or replace a part if they can save money. A manufacturer who is fully aware of a defect should not get the benefit of making this irresponsible decision whether the product is two, 12, or 20 years old. In order to discourage manufacturers from making irresponsible decisions which they know will endanger the public, we should not limit the claims of individuals who have been harmed because of the manufacturer's willful, reckless, and wanton acts. We need to encourage manufacturers to exercise due care in the design of their products, and therefore I would hope that my colleagues would support this amendment.

I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I rise in opposition to this amendment and I will be brief, again, because I know that some of our Members have other commitments.

This amendment should be defeated. The base bill precludes lawsuits only when the harm is caused by the product, not by a human being. Adopting this amendment would imply to a court that it does something that it doesn't, and therefore it should be defeated.

I yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I am going to take this opportunity to speak on this amendment in support of the amendment and on the bill. I have elected not to try to offer any amendments, but this is a very frustrating day for those of us who don't support this bill, not so much because of the substance of the bill, but because we believe that it is an extreme imposition on States' rights. I am disappointed that my colleague from North Carolina is not here, Mr. Coble, because I want the Committee to understand the impact that this bill has on North Carolina.

First of all, North Carolina has a 6-year statute of repose. This bill has a 12-year statute of repose. So if this were about the sub-

stance of what we are doing, I would be more likely to support the 12-year statute than North Carolina's 6-year statute. For me, this is not about substance. It is about what States have the prerogative to do and what the Federal Government has the prerogative to do.

Second, in North Carolina, if you are an employee and you are injured and workers' comp pays, workers' comp is subrogated to the claim of the employee against a third party, so in effect, the workers' comp carrier gets to recover against the negligent manufacturer of a machine under the theory of subrogation and so the responsibilities have been sorted out so that the person who actually has responsibility for causing the injury ends up paying, which is the whole theory on which tort law and liability law should be based.

And this bill is going to destroy that. Basically, it's going to raise workers' comp rates because workers' comp carriers won't have the ability now to recover against the person who's actually responsible for the injury as we do under North Carolina law.

Now, I don't accept all of the arguments in favor of a statute of repose of any duration, but I've got to assume that the members of my State legislature, House and Senate, in North Carolina have as much interest and as much intelligence to protect the rights and interests and relative responsibilities, including the business interests and the relative insurance interests, workers' comp and general liability interests, that I do as a Member of Congress. I don't always agree with them. I think I'd rather have a 12-year statute of repose than a 6-year statute of repose. But this strikes me as being just the most ultimate disregard of rights of States.

Tort law has always been a matter of State law. Statutes of limitations for tort law have always been a matter of State law. Statutes of repose have always been matters of State law. And I, for the life of me, haven't seen a justification for making an exception to that proposition in this case, and I, for the life of me, can't understand how Members of Congress who got elected to Congress claiming to be advocates of Government and decision making close to the people and claiming to be advocates of States' rights could possibly be supporting this.

I ask unanimous consent for one additional minute, Mr. Chairman.

Chairman SENSENBRENNER. Without objection.

Mr. WATT. Now, on this amendment, it is also true that because the apparently fairly intelligent members of the State House and Senate in North Carolina agree that if somebody wantonly and willfully and recklessly injures a resident of North Carolina, whether they are an employee or somebody who is not an employee, that there is an exception in North Carolina, and so I, you know, I can't understand why, even if we were going to federalize this, which I think there's no justification for doing, why we wouldn't at least be responsible enough to say that a manufacturer who wantonly, willfully, recklessly injures somebody in my State ought not be held liable in damages when the North Carolina legislature has said that unless we have decided, as I believe this Congress has on a number of occasions——

Chairman SENSENBRENNER. The time of the gentleman has once again expired.

Mr. WATT. I ask unanimous consent for one additional minute.

Chairman SENSENBRENNER. Without objection again.

Mr. WATT. —unless we have decided that we are God in this Congress. I just don't understand the arrogance of a group of people here who think that for some reason, we are so much brighter than the folks who serve us in our State legislature, so much more righteous than the people who serve us in our State legislature, and I, for the life of me, can't understand why Members who rode into this institution on a States' rights platform, when are you going to stand up and defend the States' rights? I just don't understand it.

I yield back.

Mr. SMITH. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I will yield my time to the gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. I thank the gentleman for yielding and I won't take the full 5 minutes, but this argument about preemption and how it's inappropriate and the whole federalism argument, I just wanted to respond to that briefly here.

Some argue, especially citing the United States Supreme Court, that tort law is inherently in the purview of the individual States. However, even the Supreme Court has acknowledged that there are times when it makes sense for Congress to preempt State tort law, such as in the case of asbestos claims. Congress has federalized a number of other State causes of action when the circumstances have proved appropriate, such as the Volunteer Protection Act of 1997, such as the Y2K Act, such as the Protection of Lawful Commerce in Arms Act, and Congress has also considered and enacted a national statute of repose before in the General Aviation Revitalization Act, which extended an 18-year statute of repose to manufacturers of small non-commercial aircraft which, at a time when that particular industry was really on a downward spiral, it took off and created an awful lot of jobs, American jobs. That Act is widely credited with reviving the general aircraft business in America without compromising safety.

The case for Congressional action here is strong. While a number of States have enacted a statute of repose for workplace goods, others have not. Durable goods manufacturers typically ship the vast majority of their products out of State, and in many cases to all 50 States. Therefore, State-by-State enactment of statutes of repose do not reduce durable good product liability insurance rates in the way a uniform national statute of repose would.

Insurance carriers, for example, are unable to predict potential liability accurately due to the uncertainty about where the durable good will be sold initially and where it will eventually end up when resold. So I think that this is an incident when it makes perfect sense for this level of Government to be involved, and I think this bill, having been in this Committee and in the House before many times, I think this is the time for us to get the job done.

I yield back the balance of my time.

Mr. SMITH. Mr. Chairman, I yield back the balance of my time.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much.

Chairman SENSENBRENNER. Are there further amendments, by the way?

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. We will go to amendments first. The gentleman from California, Mr. Schiff.

Ms. WATERS. Mr. Chairman, we are in the middle of an amendment.

Chairman SENSENBRENNER. Okay. The gentlewoman from California, Ms. Waters.

Mr. SCOTT. Parliamentary inquiry, Mr. Chairman.

Chairman SENSENBRENNER. State your——

Mr. SCOTT. Is my amendment still pending?

Chairman SENSENBRENNER. Yes, it is.

Ms. WATERS. Thank you——

Chairman SENSENBRENNER. The question is on the adoption of the amendment by the gentleman from Virginia, Mr. Scott. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I had not intended to speak on the preemption aspect of this bill. It's all about preemption, and I think Mr. Watt absolutely made the case. And the reason that I'm choosing to speak on this aspect of the legislation is we see a pattern in the Congress of the United States, not only in this Committee, but in the Financial Services Committee where I also serve, where we have a whole slew of legislation that's coming from the opposite side of the aisle to undo consumer rights. And I think it's a dangerous pattern that we see and it's absolutely a pattern that's overriding State laws and it all seems to be a building body of law to undermine the ability of consumers in this country to get justice.

Now, what's absolutely ridiculous about this bill, aside from the fact that it preempts State law and it has this arbitrary limit for 12 years, I took a look further at this bill to see that there is a Section B on transitional provision relating to extension of repose period. Not only do they say that they replace limitations on the amount of time that one could bring a civil action, if, for example, in your State there is a law that would allow for a 25-year period or a 30-year period or anything more than the 12-year period, they would disregard that altogether and grant you generously one additional year by which you could bring an action against the manufacturers.

And so I would just ask my colleagues to pay close attention to this preemption and understand that this joins a long list of preemption bills that are finding their way through the Congress of the United States that is absolutely taking away the authority of the States to determine what is in the best interest of their consumers, and I would ask you to vote aye on Mr. Scott's amendment.

I yield back the remainder of my time.

Chairman SENSENBRENNER. The gentlewoman from Florida, Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. Can I just try to bring the discussion back to the amendment at hand, because if you read the language of the amendment, what the gentleman from Virginia is asking here is to exempt willful, reckless, or wanton disregard for life or property.

Now, the gentleman from Ohio's argument against adopting this amendment was that people—that this legislation doesn't have anything to do with people, it has to do with products or equipment. Now, the last time I checked, with all due respect, products don't manufacture themselves. People manufacture products, and if there is a person or a corporate officer or a design by people who make these products and they willfully, recklessly, or wantonly have a disregard during the manufacture of that product for life or property, then even in Florida, in my home State, where we have a 12-year statute of repose for products with a 10-year or less life, we have adopted this amendment, because how could you not?

How could you not adopt an amendment that ensures that when someone does—manufactures a product on purpose, willfully, recklessly, and wantonly disregards life or property when manufacturing a product and that is discovered after the 12-year statute of repose proposed in this legislation, that we would not ensure that a lawsuit could go forward? That is insanity.

I mean, with all due respect, the gentleman of Ohio does not have a very strong argument when he says that this legislation doesn't apply to people. Of course it applies to people. It's people that are harmed by this legislation when they are harmed by a product that was willfully, recklessly, or wantonly manufactured without regard for life or property. So I would hope——

Mr. GOODLATTE. Would the gentlewoman yield?

Ms. WASSERMAN SCHULTZ. I would be happy to yield.

Mr. GOODLATTE. I hear what you are saying. I am wondering if you have examples of products manufactured that were willfully or wantonly violative of tort law and they were latent for 12 years or more. I mean, I understand what you are saying, but this is a long period of time——

Ms. WASSERMAN SCHULTZ. Reclaiming my time, I'd be glad to answer that question. I don't have specific examples right here, but I'd be glad to get some for you. But even if I was not able to produce examples, do you want to look the mother or father in the face, or the wife or sister or child of the person harmed by a product that was manufactured willfully, recklessly, or wantonly, without regard for life or property, and tell them, I'm sorry, I didn't support that amendment because I couldn't get an example out of somebody prior to the passage of this law——

Mr. SCHIFF. Will the gentlelady yield?

Ms. WASSERMAN SCHULTZ. —where that had happened.

Mr. SCHIFF. Will the gentlelady yield?

Ms. WASSERMAN SCHULTZ. I would be happy to yield.

Mr. SCHIFF. Isn't the question and the burden on the sponsors of the legislation, if there are not the examples of this being a problem, then what is the purpose of the legislation? You can't have it both ways. You can't say that the gentlelady doesn't have examples of someone doing something that would be affected by this law.

Isn't it the burden of you to say why it is that you are doing it? If there is such an absence or you are so curious about the instance of this, why are you passing the legislation?

Mr. WATT. Would the gentlelady yield?

Ms. WASSERMAN SCHULTZ. Reclaiming my time, I would be happy to yield to the gentleman from North Carolina.

Mr. WATT. I happen to have the burden of having practiced law in this area for 22 years, so I can cite the gentleman a situation, and here's the situation. The manufacturer becomes aware that a minor shield installed on a piece of equipment would make it safe, absolutely disregards that, recklessly and wantonly, and we litigated case after case after case where that occurred, just absolutely made a decision they're not going to do it.

Ms. WASSERMAN SCHULTZ. Reclaiming my time, I absolutely can produce an example for you. In Florida, there is a Florida case that would have been barred by the present law. Priscilla Williams, a 55-year-old woman who was permanently disabled when a 14-year-old Ajax steam press she was using at a dry cleaners seared her right hand to the bone. If Ajax had installed an inexpensive safeguard to this product, she would not have been injured and she had a valid claim under Florida law. Now she can no longer work due to her disability, and because Florida law specifically exempts willful, reckless, or wanton disregard for life or property, which they would no longer be able to do if this law passes without this amendment, she was able to make a claim.

Mr. WATT. Will the gentlelady yield?

Ms. WASSERMAN SCHULTZ. I would be happy to yield.

Mr. WATT. It is amazing that the same case has happened in Florida that happened in North Carolina. You all pretend they don't happen, but these things happen every day, and if you don't have the right provisions in the statute, which is exactly why the North Carolina legislature——

Chairman SENSENBRENNER. The time of the gentlewoman from Florida has expired.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I simply want to say a couple of things very rapidly. Number one, I am glad to learn from Mr. Chabot that the asbestos bill has passed both houses. I wasn't aware of that.

But number two, I think that I just want to associate myself with the remarks that say that you cannot defend a company and say they should not be liable for someone's injury even after 12 years if the injury is a result of their willful, reckless, or wanton disregard for life or property. Combine that with the fact that in 16 States, workers' compensation benefits for workers severely on the job are below the poverty level.

I might have a little more regard for this bill, not enough to vote for it, but a little more regard if as part of federalizing this law, we also mandated minimum workers' comp levels so we were not impoverishing workers who were injured because of the tortuous conduct of the manufacturer by subjecting them only to workers' comp level, which in 16 States are less than the poverty level.

So I urge the adoption of this amendment. I urge defeat of the bill, and I yield to the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman. Mr. Chairman, we are talking about the kinds of cases that might constitute willful, reckless, and wanton disregard. This would be the entire category of cases where a business just makes a cold-blooded calculation that it's cheaper to let people die and be maimed rather than fix a product. And with the statute of repose, there is no cause. It is just letting the people, if you are fully aware that there is a danger, just let it go.

Now, somebody mentioned the airline industry. I didn't support that, either. I thought that was a bad idea. But at least in that case, there was a specific industry with a specific problem and specific findings to justify it. This just covers everything.

And you ask whether or not the manufacturer can predict this. This is wanton, reckless, and wanton disregard. I mean, certainly you can predict when you're acting that kind of way.

I certainly don't understand the explanation where you say that products kill people, people don't kill people. This amendment deals with injuries that arise from a defendant's willful, reckless, and wanton disregard for life or property. I think we ought not be rewarding people in that category and I'd hope the amendment would be adopted.

Mr. NADLER. Thank you. I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, I rise to strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. And I yield to the gentleman from Ohio.

Mr. CHABOT. I thank the gentleman for yielding, and again, I will be brief. Just a couple of points here. I would hope that this argument would stick to the facts and the application of this bill. When this bill was considered back in the 106th Congress, opponents brought forth a number of claimed horror stories where injured workers would be, in their words, harmed by this bill. However, upon closer inspection, the facts of the cases they actually were, including an employer's modification of machinery as well as the employee's contributory negligence in the action, were conveniently eliminated from the opponents' description of the cases.

And I'm not going to try to refute every case that the opponents of the bill would bring forth, but I'll say that, again, no one will go uncompensated under this bill. You only get protection from this bill if the employee is covered by workers' compensation, and it will protect a number of innocent manufacturers and their employees who face bankruptcy from so many of these meritless suits.

And I also want to just refer briefly here to Black's Law Dictionary under strict product liability. I mean, we are talking here under the gentleman's amendment about willful and reckless and wanton disregard for life or property, again, a person doing something active and callous. When we are talking about strict products liability, Black's Law Dictionary says products liability arising when the buyer proves that the goods were unreasonably dangerous and that, one, the seller was in the business of selling

goods; two, the goods were defective and when they were in the seller's hands; three, the defect caused the plaintiff's injury; and four, the product was expected to and did reach the consumer without substantial change in condition.

Again, the whole idea relative to products liability, there's really no room for this reckless disregard argument that the gentleman has made in his amendment, and I yield back to the gentleman from California.

Mr. LUNGREN. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Opposed, no.

The noes appear to have it. A rollcall will be ordered. Those in favor of the Scott amendment will, as your names are called, answer aye. Those opposed, no. The clerk will call the roll.

The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostetler?
[No response.]
The CLERK. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
[No response.]
The CLERK. Mr. King?
Mr. FORBES. No.
Mr. KING. No.

The CLERK. Mr. Forbes, no. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson-Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The gentleman from Massachusetts, Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.
Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostetler.

Mr. HOSTETLER. No.

The CLERK. Mr. Hostetler, no.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson-Lee.

Ms. JACKSON-LEE. Thank you, Mr. Chairman. Aye.

The CLERK. Ms. Jackson-Lee, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?

Mr. WEINER. Mr. Chairman, how am I recorded?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

The CLERK. Mr. Chairman, Mr. Weiner is not recorded.

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report.

[No response.]

The CLERK. Mr. Chairman, there are 14 ayes and 15 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? The amendment from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3509 offered by Mr. Schiff of California. Page three, after line 14, add the following new paragraph. Section 5——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. SCHIFF OF CALIFORNIA

Page 3, after line 14, add the following new paragraph:

''(5) ACTIONS INVOLVING FRAUDULENT CONCEALMENT.—This Act does not bar a civil action against a manufacturer or seller of a durable good who fraudulently concealed a defect in the durable good.''.

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman. This amendment is a relatively simple and straightforward amendment. The purpose of the bill, as outlined in the majority analysis, is to address an alleged injury associated with use of a product after some reasonably long period of time. It is likely to have been due to either misuse or improper maintenance by someone other than the manufacturer. That is the premise of the bill.

This amendment would provide that in actions involving the fraudulent concealment of a defect, that this statute of repose would not apply. It very simply provides that the act doesn't bar civil action against the manufacturer or seller of a durable good who fraudulently conceals a defect in that durable good. So where you have a situation where there is an affirmative effort to fraudulently conceal a defect, there is no reason to give repose to someone who's guilty of that. That also results in an injury.

I think this is a very narrowly-crafted exception to this bill. It doesn't at all draw away from the purported premise of the bill, and that is to protect those who aren't responsible, who through no fault of their own and through misuse or improper maintenance of the product shouldn't be held liable. I think where it can be shown that someone fraudulently concealed a defect so that maybe the person injured didn't find out about this defect until after the period in the statute of repose, they shouldn't be barred from having some form of recovery.

So that is, in essence, what this narrow amendment does and I would urge my colleagues to support it and yield back the balance of my time.

Chairman SENSENBRENNER. The amendment from Ohio, Mr. Chabot.

Mr. CHABOT. I move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I rise in opposition to the amendment for the reason that this amendment is really unnecessary. This bill as amended only covers injury claims that are caused by the workplace durable good. To the extent that the manufacturer knowingly or fraudulently withholds pertinent information to end users of its products, the harm is caused by the concealment of facts, and as a consequence, claims of fraudulent concealment are not barred by this Act.

The fraudulent concealment exception to the General Aviation Revitalization Act was very narrow and only applied to knowing misrepresentations made to the Federal Aviation Administration. That exception is not relevant here because there is no Federal equivalent to the FAA for durable goods.

To the extent that a manufacturer of a workplace durable good knowingly misrepresents information to a State or Federal regulator, that could certainly be the subject of regulatory action which would not be protected under this bill. Further, in some jurisdictions, knowingly making a false statement to an administrative agency or legislative body is a crime.

The fraudulent concealment exception in the general aviation bill that I mentioned before is a form of Government compliance de-

fense based on the principle that an entity should not be allowed to be sued if it cooperates fully with a Government entity charged with regulating its product and complies with such Government entity's requirements. The Government compliance defense exists in several parts of Federal law, including GARA, but only in contexts in which there is a Government entity charged with regulating the relevant product.

Mr. SCHIFF. Would the gentleman yield?

Mr. CHABOT. Let me finish. There is no such Government entity at the Federal level charged with regulating durable goods generally, so the amendment is not relevant here. And in any case, the manager's amendment explicitly provides that any State governmental entity can proceed with enforcement actions against the manufacturers of any durable good over which that governmental entity has jurisdiction, and I'd be happy to yield to the gentleman.

Mr. SCHIFF. I thank the gentleman for yielding. I guess my question is this. Let's say that I'm injured by a product at the workplace. It's during the 12-year period, so it's not barred by the statute of repose. I go to the seller of the product or the manufacturer of the product and I say, I've been injured in this way. Have you had any experience with any other people being injured in this way? Maybe it was unique to me. And the seller of the good or the manufacturer says, no, we've never heard of any problem like this. It must have been improper use at the workplace. But, in fact, the seller and manufacturer both know there are many other cases of exactly the same injury. So they have fraudulently concealed from me the facts.

Now, I learn in year 13 that, in fact, there are 15 other people that have been injured in exactly the same way. Am I barred under your bill? It seems to me that I am——

Mr. CHABOT. Reclaiming my time, in my opinion, you would not be barred, because you could still go under fraudulent concealment, and under my—in my opinion.

Mr. SCHIFF. All this amendment says is that where there's fraudulent concealment, I would not be barred. So if you think that's——

Mr. CHABOT. I mean, it's unnecessary. It doesn't say you can't murder people, either. It's just not necessary to have in this bill. So I think it just confuses it. You're having verbiage in there that's just unnecessary. So I would agree, if somebody does fraudulent conceal information and they're outside the year, they could still be brought under State regulatory action. They could still be criminally charged——

Mr. SCHIFF. Well, if the gentleman would yield, I'm not talking about criminal charges or State regulatory action. I'm saying, I'm the injured party. I've been lied to by that manufacturer, that seller. Are you barring me——

Mr. CHABOT. Reclaiming my time, no, I don't think you're barred at all under this bill.

Mr. SCHIFF. Then let's make it explicit. That's all this amendment does. If you're saying that's what you intend to do anyway, let's make it explicit.

Mr. CHABOT. Well, this is part of the Congressional record, this discussion here. I'm talking as the proponent of this legislation that, in my view, you would not be barred. But I also am saying that I don't think you need to say a lot of things in there unneces-

sarily. You could add all kinds of things, and that's generally what we try to avoid in these bills, is just excess verbiage that's unnecessary, and I yield back the balance of my time.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I'm just reading the bill trying to look for that fraud exception. Other than in the amendment that's before me, all I see is no civil action may be filed. I don't see any kind of exception for fraud. You certainly decided that if it's wanton disregard for life and limb, that doesn't matter. But there's nothing in here—where, other than this discussion that it would be a good idea, where in the bill do you have a limitation that if the defect is fraudulently concealed, where in it do you have a right to continue—the language is, no civil action may be filed, with exception, and I yield——

Mr. SCHIFF. Will the gentleman yield?

Mr. SCOTT. I yield.

Mr. SCHIFF. I will be happy to yield to my colleague if you want to respond, too, but I sat in on a Supreme Court argument yesterday and it was interesting to listen to the Justices talk about what weight they should give legislative committee discussion or legislative history, and the bottom line was, not much. If it's not in print, there's not much interest they show in legislative intent.

This would put it in print, and I don't understand why we'd want to incentivize a manufacturer or seller to deny a history of defect with a product. That doesn't meet the purposes of the bill. And if, indeed, this is the goal the gentleman has in the legislation, not to preclude this kind of action, then let's make it explicit so we don't have the Supreme Court wondering what we intended to do.

Mr. SCOTT. Reclaiming my time, I'd just say it's absolutely clear that no action may be filed if it occurred 12 years ago and if you had workers' comp, period. It doesn't say fraud. It doesn't say anything. I don't see an exception. Maybe there is. This is a quick reading, and I've asked the gentleman from Ohio to point out where in the bill he can find language to support what he just said.

Mr. NADLER. Would the gentleman yield?

Mr. SCOTT. I will yield.

Mr. NADLER. I would simply point out that if the gentleman from Ohio is saying this is in the bill, we can't find it in the bill, it does no harm to make it explicit. It's very difficult to see how you can justify giving this kind of relief to someone who fraudulently concealed the defect in durable goods. So why not make it explicit? Adopt the gentleman's amendment and have done with this debate as to whether it's there or not. Since apparently there's agreement it ought to be there, put it there clearly. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from California.

Mr. NADLER. Mr. Chairman——

Mr. SCOTT. I yield to the gentleman from North Carolina.

Chairman SENSENBRENNER. Okay. The gentleman is recognized.

Mr. WATT. I was just going to suggest that since it's now clear that there's no exception for willful, wanton, and reckless, either, that we also put that in——

Mr. CHABOT. Will the gentleman yield?

Mr. WATT. —while you're in the process.

Mr. CHABOT. Will the gentleman yield? Is it the gentleman from California's time, or whose time is it? Would the gentleman yield?

Mr. SCOTT. I yield.

Mr. CHABOT. I think the gentleman has raised some interesting issues, and we're not doing anything here which we're trying to harm workers or anybody that has a legitimate claim, so I'd be happy to work with the gentleman between now and the bill getting to the floor if the gentleman would consider withdrawing his amendment.

Mr. WATT. Will the gentleman yield?

Mr. CHABOT. I would be happy to yield. Well, it's not my time, but——

Mr. WATT. I just wonder, since you're working with us, can we just put the language in the bill and continue to work? [Laughter.]

I mean, I think that's the way to do it. Right now, it's absolutely clear that there's no language in the bill that either deals with fraudulent concealment or willful, wanton, or reckless activity. Regardless of what you read from Black's Law Dictionary, there's nothing in this bill that covers that. So if you want to put it in the bill, let's put it in the bill and then you can continue to clean it up between now and the floor, but——

Mr. WEINER. Will the gentleman yield?

Mr. WATT. —if you are asking us to vote for this, I don't know how you could be asking us to vote on the bill like that.

Mr. WEINER. I am curious, perhaps a good time to make changes in the bill to perfect it is during markup. It's this process in Congress after you have the hearing on the bill, you have a markup on the bill where the Members get together, find perfections that are needed. We'll call it a markup. We'll put it on the schedule. We'll all gather together. We'll make suggestions, then have votes on it. And if you support it and we support it, then I think this might—this concept, I know, is perhaps evolutionary for this Committee, but what the heck. Let's try it out. Let's see if it works. I yield back.

Mr. CHABOT. Let me—would the gentleman yield?

Mr. SCOTT. I yield.

Mr. CHABOT. Once again, we'll make one more try. We're willing to work with the gentleman. We're talking about—you know, this bill basically deals with products liability. You're talking about fraudulent concealment here. And, you know, you won't take yes for an answer, but we're willing——

Chairman SENSENBRENNER. The time of the gentleman from Virginia has expired. The question is on agreeing——

Mr. SCHIFF. Mr. Chairman, may I pose a parliamentary inquiry, since there's not enough time? I think the gentleman's question is directed to me——

Chairman SENSENBRENNER. The gentleman will state a parliamentary inquiry.

Mr. SCHIFF. Mr. Chairman, what does my colleague on the other side of the aisle have in mind?

Chairman SENSENBRENNER. That is not a proper parliamentary inquiry. The chair has learned for a long time never to read anybody's mind on what's going on here, including his own. So the

question is on agreeing to the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

We are about ready to come up on a vote and we have seven more amendments pending, so I think it's time to break. We will start again next week, and without objection, the Committee stands adjourned.

[Whereupon, at 11:21 a.m., the Committee was adjourned.]

BUSINESS MEETING
(continued)
WEDNESDAY, JULY 19, 2006

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda, and pursuant to notice, I call up the bill H.R. 3509, the "Workplace Goods Job Growth and Competitiveness Act of 2005," for purposes of markup.

When the Committee met and began consideration of this legislation on March 29 of this year, the Chair had moved that the Committee favorably recommend H.R. 3509 to the House, and the bill was considered as read and open for amendment at any point.

A manager's amendment offered by the gentleman from Ohio, Mr. Chabot, had been adopted, as well as an amendment offered by the gentleman from California, Mr. Schiff.

The Committee will now resume consideration of amendments to H.R. 3509. Are there further amendments?

Mr. LUNGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California?

Mr. LUNGREN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "An amendment to H.R. 3509 offered by Mr. Daniel E. Lungren of California. Page 5, after line 11"——

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. DANIEL E. LUNGREN OF CALIFORNIA

Page 5, after line 11, add the following new paragraph:

(4) FRAUDULENTLY CONCEALED.—With respect to a durable good, the term ''fraudulently concealed'' means that—

(A) the manufacturer or seller of the durable good had actual knowledge of a defect in the durable good;

(B) the defect in the durable good was the proximate cause of the harm to the claimant; and

(C) the manufacturer or seller of the durable good affirmatively suppressed or hid, with the intent to deceive or defraud, the existence of such defect.

Mr. LUNGREN. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Mr. Chairman, thank you for the time.

Let me remind Members of the Committee that our last markup session of this bill we adopted an amendment offered by our colleague, Mr. Schiff, which provides that nothing in the bill would constitute a bar to a civil action against a manufacturer or seller of a durable good who fraudulently concealed a defect in the durable good.

I supported this amendment because I agreed with the amendment that someone who fraudulently conceals a defect does not warrant the protection otherwise provided under this bill. That seems common-sensical.

However, the premise of H.R. 3509 is based on the absence of a legal blameworthiness of someone who manufactures or sells a durable good which operates successfully for more than 12 years. If a machine has functioned for such an extended period of time, it is unlikely that it was improperly designed. However, one who fraudulently conceals a defect does not possess the same equities and should be held liable for such culpability.

At the same time, however, I think we can further improve upon the bill by clarifying what is meant by the phrase "fraudulent concealment." Therefore, I am now offering an amendment to accomplish that very thing. It is a technical amendment in the sense that it furthers the purpose of the bill as amended during our last markup. However, I realize that what is considered to be technical in nature is often in the eyes of the beholder.

So let me explain. My amendment would define the term "fraudulent concealment" to mean that the manufacturer or seller of the durable good had actual knowledge of a defect. Secondly, the defect must be the proximate cause of the harm to the claimant. And third, the manufacturer or seller affirmatively suppressed or hid with the intent to deceive or defraud the existence of such defect.

I think this goes to what the gentleman from California was attempting to do in his amendment last time, and that is why I supported his amendment. But I believe this further clarifies the purpose. In my estimation, it captures the kind of conduct which should not be protected by this bill.

I would add that this is a commonly used definition of "fraudulent concealment." As a matter of fact, it is virtually identical to that language found in Black's Law Dictionary.

In conclusion, I think that this proposed language preserves the aims of H.R. 3509, preserves the intent of the gentleman from California with his amendment, which we supported and I supported, while denying bad actors any safe harbor. I would ask for your support.

With that, I yield back the balance of my time.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I will be very brief.

I strongly support this amendment. As Mr. Lungren stated at the last markup of the bill in March, the Committee accepted by voice vote an amendment by our colleague, Mr. Schiff, that would create an exception to the immunity protections of this bill for manufacturers that fraudulently concealed defects in their products.

At the time of that amendment, and it being accepted, I had indicated that I would like to work with Mr. Schiff to clarify some of the terms in that amendment. Mr. Lungren's amendment does just that by defining "fraudulently concealed" in such a way that it is consistent with Black's Law Dictionary in its definition of the term, as well as the way that the term is used in State statutes and in case law.

It also ensures that this fraudulent concealment exception does not swallow the very sensible rule that we are trying to establish with this bill. For that reason, I strongly support the amendment, and I would urge my colleagues to do so as well.

I yield back the balance of my time.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Well, to ask the sponsor of the amendment, how does this——

Chairman SENSENBRENNER. The gentleman from Virginia strikes the last word and is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I would ask how this changes the present law on fraudulent concealment? "Fraudulent concealment" is in there. If we don't pass this amendment, what would the, how would this be different?

Mr. LUNGREN. Well, this clarifies exactly what we mean. I don't think it essentially changes what is commonly understood as "fraudulent concealment." That is why I have gone to the commonly used language. But it prevents courts from adopting various different definitions of this, since this is added in the law by our statute that we are considering here today.

This basically defines, I believe, what would commonly be understood as "fraudulent concealment." Particularly, it makes it clear in the context of this bill. As the gentleman from Ohio suggested, we want to make sure that when we added "fraudulent concealment," it doesn't swallow up the purpose of the bill, but rather goes towards specific types of conduct that I think we would all agree should not have the protection of this bill.

Mr. SCOTT. Reclaiming my time, Mr. Chairman.

Some of the provisions like the defect was the proximate cause of the harm would have to be part of the case anyway. I am not, I am just seeing this for the first time. So if the intent is not to change the present law definition of "fraudulent concealment," I wouldn't have a problem with it. But if it is changing the law, we would have to discuss what the change is.

Mr. LUNGREN. If the gentleman would yield?

I do not believe it does change the law. As I said, this is the commonly accepted definition. It makes it clear that that is what we intend and nothing else. That is why I described it as a technical amendment, but then went on to explain it, to try and assure you

that I am not attempting to change what the law is as we understand it.

Mr. CHABOT. Would the gentleman yield?

Mr. SCOTT. I yield.

Mr. CHABOT. I thank the gentleman for yielding.

I would just quote Black's Law Dictionary here: "Fraudulent concealment: the affirmative suppression or hiding with the intent to deceive or defraud, of a material fact or circumstance that one is legally or sometimes morally bound to reveal."

So it just clarifies the law, and I would commend the gentleman from California for offering the amendment.

Mr. SCOTT. Reclaiming my time, it sounds like you are restating the law, which would obviously be acceptable.

I yield to the gentleman from North Carolina.

Mr. WATT. Could I just follow up on the concern that is being raised? I think there is nothing in the definition that you read that requires actual knowledge, as opposed to constructive knowledge. Is this a change in the existing law in that respect? Or is that the current law?

Mr. LUNGREN. If the gentleman would yield? I do not believe it does change the law. If you will recall, the language in Black's Law Dictionary refers to affirmative suppression or hiding, which would——

Mr. WATT. But you could affirmatively hide something that you——

Mr. LUNGREN. You didn't know about?

Mr. WATT. Well, that you should have known about, with any kind of reasonable diligence. Or you can hide something that you actually knew about, which is what your amendment says. So actual knowledge is one thing. The question I am asking is, does the current fraudulent concealment standard require actual knowledge, or is it sufficient that one should have known using any degree of reasonable diligence?

Mr. LUNGREN. Again, I would say this is not an attempt to change the law, as I understand it, as I understand the way the Supreme Court has interpreted the law where they have read knowledge into a statute, whether it was expressly stated or not. Again, I support the Schiff amendment. I supported it the last time we considered this bill. I thought it was good. This clarifies what current law is.

Again, we are dealing with something that happens 12 years after it has left the hands of the individual involved. It is not my attempt to try and change the law. This is my best attempt to try and articulate what the current status of the law is by language of statute and by interpretations of the Supreme Court.

Chairman SENSENBRENNER. The time of the gentleman from Virginia has expired.

For what purpose does the gentleman from California seek recognition?

Mr. SCHIFF. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I wanted to ask the gentleman if he could read that definition again. The only concern I had about the language is in

subsection C, the manufacturer or seller of the durable good affirmatively suppressed or hid the existence of the defect.

I am just thinking about a scenario where you have a manufacturer or seller of a good who knows, who has actual knowledge that a defect exists in a product and it is hurting people, and doesn't disclose the defect, and people continue to get hurt.

Now, that non-disclosure with knowledge arguably is not affirmatively suppressing it or affirmatively hiding it. It is just failing to disclose to the public that the product is injuring people. I thought the language that the gentleman read, but was not included in this, said something about there being equitable reasons why the defect needed to be disclosed.

I was just hearing it from the gentleman for the first time. I don't know whether it was Mr. Chabot may have read that. Who read it?

Mr. CHABOT. Would the gentleman yield?

Mr. SCHIFF. Yes.

Mr. CHABOT. We have the language here. It is the definition from Black's Law Dictionary.

Mr. SCHIFF. And how did the end of that?

Mr. LUNGREN. I will be happy to read it to you: "The affirmative suppression or hiding with the intent to deceive or defraud of a material fact or circumstance that one is legally or sometimes morally bound to reveal." I would just give you an example of a case——

Mr. SCHIFF. If I could just reclaim my time for a second.

Mr. LUNGREN. Yes.

Mr. SCHIFF. The "morally required to reveal" seems to go beyond hiding or suppressing it, but that language is not included in subsection C here. That is my only concern is that where you have a manufacturer is aware of the defect, knows it is injuring people, it seems like the way this is crafted there wouldn't be any obligation to reveal that defect. As long as you weren't suppressing the information, there wouldn't be any responsibility to stop the product from injuring people.

Mr. LUNGREN. Well, we say "affirmatively suppressed or hid," "or hid." He didn't reveal something that he knew. The language I have is "affirmatively suppressed or hid the existence of such defect." I think that covers the gentleman's concern. Believe me, we have tried to craft this consistent with the various cases that we looked at for what "fraudulent concealment" is.

Just one example, a case out of Illinois, they said generally to establish fraudulent concealment sufficient to toll the statute of repose, plaintiffs must show affirmative acts or representations designed to prevent discovery of the cause of action or to lull or induce the plaintiffs into delaying the filing of their claim.

That is why we say here, "affirmatively suppressed or hid, with the intent to deceive or defraud, the existence of such defect."

Mr. SCHIFF. Reclaiming my time, I wish I had a little more time to examine this because I want to make sure that you can't defend against a claim that you knew about the defect, you knew it was hurting people, you did nothing to alert people to the fact that it was hurting people. And the defense would be, well, we didn't affirmatively suppress it. We didn't affirmatively take action to hide it. We just didn't disclose what we knew.

Mr. LUNGREN. I would think affirmatively hiding it is not notifying people of something that you know about, that is the existence of such a defect, with the intent to deceive or defraud. I don't think I would have too much trouble in court with the facts that you gave me of not only passing a prima facie case review, but of proving my case.

Mr. SCHIFF. Mr. Chairman, I will yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Lungren.

Those in favor will say "aye."

Those opposed, "no."

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott, for what purpose do you seek recognition?

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Scott VA 065.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "Amendment to H.R. 3509 offered by Mr. Scott of Virginia. Page 3, beginning on line 15, strike subsection C and insert the following new subsection C. Effect on state law; preemption"——

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. SCOTT OF VIRGINIA

Page 3, beginning on line 15, strike subsection (c) and insert the following new subsection:

''(c) EFFECT ON STATE LAW; PREEMPTION.—Subject to subsection (b), this Act preempts and supersedes any State law that establishes a statute of repose for a period less than 12 years to the extent such law applies to actions covered by this Act. This Act does not preempt or supersede any State law that establishes a statute of repose for a period longer than 12 years. This Act does not preempt or supersede any State law that prohibits a statute of repose, nor does this Act impose a statute of repose with respect to actions otherwise covered by this Act on a State that does not have a State law that establishes a statute of repose with respect to such actions. Any action not specifically covered by this Act shall be governed by applicable State law.''.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, for States that have statutes of repose, this amendment would set a floor of such statutes at 12 years, while leaving a ceiling for longer statutes of repose. At the same time, this amendment states that this act shall not preempt State laws that prohibit statutes of repose, nor apply to States that do not have a statute of repose in their laws.

Mr. Chairman, if the purpose of the statute of repose is to create a line of judicial fairness between manufacturers and sellers on the one hand, and consumers on the other, then we need to be very careful where we draw the line in the interests of justice. Moreover, we must also respect the rights of States and decision-makers at the State level.

There is a broad array of policy decisions about statutes of repose across the country. Some States have created a statute of repose that is shorter than 12 years, some longer. Some States have prohibited statutes of repose and some remain silent on the issue. We need to be cautious when we attempt to preempt some State laws and not others, and make sure that whatever we do is done judiciously.

Mr. Chairman, we have not seen any evidence of product liability claims that are currently clogging the courts or affecting American competitiveness. There is no litigation explosion or insurance crisis occurring that would justify keeping the few injured persons affected by this bill from bringing forth their claims.

According to the annual cost of risk survey prepared by consultant groups, in 1996 U.S. companies spent only 57 cents for every $100 in revenues on all liability insurance costs, including product liability, property and workers' comp. And remember, this bill only affects the few cases by establishing a statute of limitations for just a few of the potential claimants under products liability.

For the proponents of this bill that seek uniformity in State laws, this amendment will help standardize the law by setting a floor of 12 years. However, this amendment does not create a ceiling that would prevent States that currently have or wish to enact consumer-friendly statutes of repose longer than 12 years.

Similarly, we should not preempt State laws that prohibit statutes of repose as a means of consumer protection, nor should we impose this new law on States that have not elected to impose a statute of repose for themselves.

Mr. Chairman, I ask that this amendment be adopted. It strives to strike a balance between consumers, manufacturers and States rights.

I yield back.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I strongly oppose this what amounts to a gutting amendment. The proposed amendment would restrict application of this bill,

H.R. 3509, to the handful of States that currently have a statute of repose of less than 12 years, increasing the repose period in those States to 12 years.

For States that have a repose period greater than 12 years, the amendment would leave those States intact. If a State currently did not have its own statute of repose, this amendment would preclude the application of a Federal statute.

The proposed amendment would reverse H.R 3509's intended effect. Rather than establish a uniform policy across the country to preclude lawsuits concerning durable goods used in the workplace that are more than 12 years old, the proposed amendment would leave nearly completely intact the varied State law approaches toward statutes of repose.

Since that patchwork of State laws has led to the liability difficulty that American manufacturers face today and the subsequent and resulting job losses, an awful lot of people lose their job as a result of this, particularly if a business goes bankrupt as a result of one of these lawsuits. I would strongly oppose this what amounts to a gutting amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott.

Those in favor will say "aye."

Those opposed, "no."

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. I have an amendment at the desk. It may have a "3" in the upper right-hand corner, or KAS 058.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "Amendment to H.R. 3509 offered by Mr. Scott. Page 2, line 2, strike '12' and insert"——

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. SCOTT

Page 2, line 2, strike "12" and insert "18".

Page 2, line 9, strike "12" and insert "18".

Page 2, line 24, strike "12" and insert "18".

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment would change the statute of repose in the bill from 12 to 18 years. If we are going to have one national statute of repose, it ought to be more consistent with what is going on with other Federal statutes of repose. The model to which the proponents of the bill point to demonstrate the success is the General Aviation Revitalization Act of 1994. That bill had an 18-year statute of repose.

My amendment would merely make the statute of repose for durable goods consistent with the statute of repose that we enacted in that bill. In addition, the 18-year statute of repose is consistent with the bill on durable goods offered by the same chief sponsor during the 106th Congress, which passed the House in February 2000, a bill offered by the same gentleman in the 107th Congress, and another bill offered by the same gentleman in this Congress.

Mr. Chairman, at a time when we have a responsibility for protecting the rights of injured parties that have legitimate claims, and I am not aware of any vital reason why a manufacturer would need protection at 12 years, and clearly there are strong precedents for the 18-year number.

I therefore urge my colleagues to adopt the amendment.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I also strongly oppose this amendment. In the approximately one dozen States that currently have a fixed-term statute of repose, the clear consensus is that the period of repose should be 12 years or less. Another seven States have a so-called "soft" statute of repose that extends for the useful life of the covered product. Of those States, most have a presumption that the useful life of the product is 12 years or less.

Not only do most States have a statute of repose that is shorter than 12 years, but most of our foreign competitors do as well. The European Union, Japan, Australia, and South Korea all have a 10-year statute of repose for their goods. Therefore, for the jurisdictions that have considered a statute of repose, 12 years is certainly a sufficient time to determine that the product was designed and manufactured properly.

This amendment would just seek to expose manufacturers to liability for an even longer period of time, and therefore continue to hamstring our manufacturing base against their foreign competitors in Europe and Japan and Australia and South Korea and other places.

For that reason, I oppose this amendment. And further, only one State, Vermont, has a statute of repose that is longer than 18 years. This bill would then have the effect of exposing manufactur-

ers to more liability than they already have right now. So again, I strongly urge my colleagues to oppose this amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott.

Those in favor will say "aye."

Those opposed, "no."

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments? The gentlewoman from Texas, Ms. Jackson-Lee, for what purpose do you seek recognition?

Ms. JACKSON-LEE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. CHABOT. Mr. Chairman, I reserve a point of order on this.

Chairman SENSENBRENNER. A point of order is reserved by the gentleman from Ohio.

The clerk will report the amendment.

The CLERK. Mr. Chairman, there are two amendments.

Chairman SENSENBRENNER. Which one? If the gentlewoman from Texas would please tell the clerk which amendment she would like to report?

Ms. JACKSON-LEE. Number 220.

The CLERK. "Amendment to H.R. 3509 offered by Ms. Jackson-Lee of Texas. Page 3, after line 14, add the following new paragraph: (5) Minimum Wage Requirement: This Act does not bar a civil action against a manufacturer or seller that on or after the date of an enactment of this Act, does not pay its employees a minimum wage of at least $7.25 per hour."

[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MS. JACKSON-LEE OF TEXAS

Page 3, after line 14, add the following new paragraph:

''(5) MINIMUM WAGE REQUIREMENT.—This Act does not bar a civil action against a manufacturer or seller that, on or after the date of the enactment of this Act, does not pay its employees a minimum wage of at least $7.25 per hour.''.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes, subject to the reservation of the point of order by the gentleman from Ohio, Mr. Chabot. The gentlewoman is recognized.

Ms. JACKSON-LEE. Let me, Mr. Chairman, thank you very much and thank the Ranking Member.

I wish to explain a very simple amendment. It simply bars the statute of repose from being asserted as a defense to a civil action for damages against a manufacturer or seller that does not pay its employees minimum wage of at least $7.25 per hour.

It should be noted that at $7.25 per hour, an employee may be living, but she is hardly living large. Mr. Chairman, without this amendment I cannot support the bill. I believe if there is no expiration date for responsibility for injury or damages from the durable good provided by the company, all of the arguments in favor of the bill, reducing the number of frivolous lawsuits, limiting unending litigation, and lowering insurance rates, benefit the manufacturers directly and consumers indirectly, if at all.

Moreover, I think it is scandalous that the bill preempts more liberal statutes of repose that States have enacted to protect their workers. For example, my home State of Texas currently protects manufacturers after 15 years from the date of sale. Texas still practices remedies called 16012. It is contradictory and redundant to take this action to eliminate the protection that my State citizens receive in the State of Texas.

My amendment is germane. Indeed, this Committee has a long history of considering and approving carve-out amendments to legislation. When we marked up the class action bill, we offered amendments to carve out the Benedict Arnold Corporation. When we marked up the product liability bill, we offered amendments to exclude foreign corporations. Four months ago when we marked up the volunteer liability bill, we offered an amendment that was accepted, which excluded companies that did not provide notice of foreign off-shoring, and that was a carve-out offered by Ms. Waters.

We should be focusing our efforts on protecting those who may be in jeopardy or dealt an injustice by a larger organization, rather than restricting a consumer's ability to hold a manufacturer of the purchased product accountable.

Consider Mr. Don Rhea, an injured worker from my own State of Texas, and a refinery worker. Mr. Rhea was trying to repair a cracked valve on a steam pump when the pump's cracked valve drenched him in hot oil. Rhea suffered burns to over 30 percent of his body.

However, the National Transit Pump and Machine Company, which had manufactured the defective pump over 20 years ago, is presumably safe from civil action. The fault is clear, and yet Mr. Rhea would not have any legal recourse. It is simply unjust.

However, the amendment that I am proposing does not change the nature of the bill. It simply limits the scope of the bill to those manufacturers of durable goods who take exceptional care to minimize the likelihood that their products will be manufactured in a defective manner. My amendment achieves this purpose by recognizing that employers who compensate the employees adequately are likely to attract and retain their employees.

Similarly, employers who manufacture their durable goods in the United States and sell them to Americans are also more likely to ensure that such products are manufactured with a high degree of workmanship and care.

Mr. Chairman, did you know that today's minimum wage of $5.15 is the equivalent of only $4.23 in 1995, which is even lower than the $4.25 minimum wage before the 1996-1997 increase. It is scandalous, Mr. Chairman, that a person can work full time, 40 hours per week for 52 weeks earning the minimum wage, which would gross just $10,700, which is well below the poverty line.

A minimum wage would increase the wages of millions of workers. An estimated 7.3 million workers, 5.8 percent of the workforce would receive an increase in their hourly wage if the minimum wage were raised from $5.15 to $7.25 by June 2007. Due to spillover effects, the 8.2 million workers, 6.5 percent of the workforce, earning up to $1 above the minimum would also be likely to benefit from an increase.

Raising the minimum wage will benefit working families. The earnings of minimum wage workers are crucial to their families' well being, and evidence from the 1996 to 1997 minimum wage increase shows that the average minimum wage worker brings home more than 54 percent, or half of his or her family's weekly earnings. An estimated 760,000 single mothers with children under 18 would benefit from a minimum wage increase to $7.25 by June 2007. Single mothers would benefit disproportionately from an increase.

Let me also say in conclusion that, again, we have had these carve-out amendments. It seems to me certainly patently unfair that we give high benefits to those who are already taken care of, manufacturers who have insurance, who have deep roots, if you will, deep pockets, to ensure that they are protected, but lo and behold, those workers who are either injured or are now trying to oppose the opportunity for their protection, and then of course we are giving them minimum wages.

So I ask my colleagues to support this amendment.

Chairman SENSENBRENNER. Does the gentleman from Ohio insist on his point of order?

Mr. CHABOT. Mr. Chairman, after, it is my understanding, consulting with the parliamentarian, I will withdraw my motion, but I do want to speak in opposition.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. I thank the Chairman.

I oppose this amendment. This is a really transparent attempt to impose on machinery manufacturers an increase of the Federal legal minimum wage by $2.10 per hour, from $5.15 to $7.25. This amendment is completely unrelated to the subject matter of H.R. 3509. Adjustments in the minimum wage, when appropriate, should be considered in the context of the Fair Labor Standards Act, and only after careful consideration of the economic impact of such an adjustment.

There is no demonstration of why the equipment industry should suffer economic discrimination, nor has there been any showing of the economic impact of the proposed amendment. Further, the objective of this bill is to enhance the competitiveness of the U.S. cap-

ital good industry, and there is no evidence that this amendment would do that.

For those reasons, I oppose this amendment and would urge my colleagues to do the same.

I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Mr. Chairman, I rise in support of this amendment. I think notwithstanding the Fair Labor Act or other technicalities, this is a simple attempt to increase the minimum wage and this is an appropriate way to do it. And so I think that since 1997, we are not asking too much to support the gentlelady from Texas's amendment, which is to me really right on time.

It is a common-sense attempt to counter a bill that may strip hard-working Americans of their ability to obtain justice. I would add my statement to the record and yield back my time.

Chairman SENSENBRENNER. Without objection.

For what purpose does the gentleman from California, Mr. Issa, seek recognition?

Mr. ISSA. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. Well, Mr. Conyers, Mr. Chairman, Mr. Conyers said it very well. This is simply an attempt to raise the minimum wage, something over which this Committee doesn't have jurisdiction. So regardless of statements by the parliamentarian, this would be inappropriate in this Committee. This would be inappropriate this time.

But moreover, I would be happy to support this amendment if in fact it applied to China, to India, to Pakistan, to Sri Lanka, to every other place that American manufacturers find themselves competing against companies that have no liability on day one, and all they are asking for in this bill is to limit their liability to a reasonably insurable period.

With all due respect to the gentlelady from Texas, it costs money. I think I may be the only manufacturer in this room. It costs money for every additional year.

Ms. JACKSON-LEE. Would the gentleman yield?

Mr. ISSA. No. For every additional year that you want to in fact insure. So yes, you can talk about deep pockets, but the American consumer pays for it and the American employee pays for it because those products stop being made in America. You can import from China and on day one there is no liability, and yet a decade or 2 decades later in many States or beyond, there is still liability.

I yield to the gentlelady for her comments.

Ms. JACKSON-LEE. Thank you. I was just wondering if you believe that foreign countries should dictate what American workers get paid? Because by your logic——

Mr. ISSA. Reclaiming my time, if we can in fact not control, with this bill, we can't control the liability to make it closer for manufacturers so that they can stay in America and employ Americans at America's free market wages. America has a free market system and the vast majority of manufacturing jobs pay very well and they pay far above minimum wage.

But the reality is that this is a very expensive part of being a manufacturer in America is the in perpetuity liability. It drove airplane manufacturers out of this country, shut them down. They are only back because this body enacted legislation to try to give them an opportunity to make it in America, and they are making in America again.

Mr. CONYERS. Would the gentleman yield?

Mr. ISSA. Certainly.

Mr. CONYERS. Thank you. I don't mind you being opposed to the amendment. As a manufacturer, you don't want to raise the minimum wage, but don't make us have to raise China and other countries.

Mr. ISSA. Reclaiming my time, if this Committee had the power to raise minimum wage, we could have a better discussion. If this Committee had the power to affect wages in China, I would be happy to try to assert that.

Not having such power, I can only say that this amendment needs to be defeated. It needs to be defeated because it only serves to make what is already an incredibly difficult task, and that is manufacturing here in America, even harder.

This simple, straightforward piece of legislation is designed to make it uniform State by State for companies to manufacture knowing that at some date in the future, they will actually no longer have liability.

The fact is the courts have not been willing to see fit that even when technology not known is employed, and then later is known, the courts have said, well, we still are going to hold you liable for what you didn't know in 1939. That history is what we are dealing with today.

With that, I urge defeat of this amendment. I yield back.

Ms. WASSERMAN SCHULTZ. Will the gentleman yield for a question?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much.

Mr. Chairman, if I may, I would like to ask the gentleman from California, who just made such a passionate argument about not raising the minimum wage because of the cost of manufacturing in the other countries. I would like to ask him if he would yield to a question or two.

Did you support NAFTA?

Mr. ISSA. I wasn't in the Congress, but I did testify on behalf of the California Chamber.

Ms. WATERS. Did you support CAFTA?

Mr. ISSA. I voted for it, yes, I did.

Ms. WATERS. Are you in support of the WTO?

Mr. ISSA. Yes, ma'am.

Ms. WATERS. Okay, so you support world trade.

Mr. ISSA. Yes, I do.

Ms. WATERS. And you have not raised any arguments about the wage or the liability limits or any of that in your discussion in support of world trade. Is that right?

Mr. ISSA. With all due respect to the lady, I in fact have been part of trying to make sure those trade agreements have specific labor in them. The Oman free trade agreement is going to be——

Ms. WATERS. Are you supporting the Oman trade agreement?

Mr. ISSA. I am, and it is going to be a landmark for labor fairness.

Ms. WATERS. Are you supporting the agreement with Peru, where they tried to have labor standards that were resisted by your side of the aisle?

Mr. ISSA. I have not yet looked at Peru.

Ms. WATERS. All right, then, I don't think the gentleman has an argument. I yield to the gentlelady from Texas.

Ms. JACKSON-LEE. I thank the distinguished gentlelady for her yielding. I would simply offer a rebuttal to my good friend from California on several points.

First of all, I think we on a general basis would hope to enhance the conditions and environment of those countries so named. I don't in any way believe that the United States should in any way seek to equal itself to countries who have been known for notorious work-related practices and known for notorious practices of enslaved labor, specifically some that have been named.

What I would also argue is that this is legislation dealing with competitiveness. If that is the case, then I would suggest that we want our American workers to be competitive. But more pertinent to this particular amendment, it is not a direct increase. What it says is that it extends benefits of the statute of repose to those companies who would pay a minimum wage and above.

Therefore, I think that it is worthy of this particular legislation and it is a worthy amendment because how can we, one, deny various States their more innovative statutes of repose, more protective, innovative statutes of repose, and then at the same time in the same voice, not support making workers competitive and making the benefits of the present legislation go to those who would do right and have a good conscience and raise the minimum wage.

I was just asked an eloquent or very important question, is whether any of the Members can recall any of their relationships, their families, their neighbors trying to survive on a minimum wage? If you have had that kind of history, then you understand the value of an amendment that would ensure that manufacturers simply do the basics and provide a minimum wage.

Just think back. Do any of you have any recollection? Maybe that is not your history. But if it is, then have an understanding of the importance of a minimum wage here and now. I would just join the gentleman, and I know his heart and his record of concern, I would join the gentleman, as many of us would, to put a minimum wage increase on the floor of the House that actually does raise the minimum wage. This one says that you do not benefit from the statute of repose if you do not increase the minimum wage.

I would also ask that my statement in its entirety be submitted into the record.

I yield back to the distinguished gentlelady.

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from Texas, Ms. Jackson-Lee.

Those in favor will say "aye."

Those opposed, "no."
The noes appear to have it.
Ms. WATERS. With that, I ask for a rollcall.
Chairman SENSENBRENNER. A rollcall will be ordered. Those in favor of the Jackson-Lee amendment will, as your names are called, answer "aye." Those opposed, "no." The clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no.
Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
[No response.]
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Mr. Flake?
[No response.]
Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.

Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
Mr. BERMAM. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher?
[No response.]
Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson-Lee?
Ms. JACKSON-LEE. Aye.
The CLERK. Ms. Jackson-Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. Delahunt?
[No response.]
Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.

Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye.
Mr. Van Hollen?
[No response.]
Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there further Members in the chamber who wish to cast or change their votes? If not, the clerk will report.
Ms. JACKSON-LEE. Mr. Chairman, how am I recorded?
Chairman SENSENBRENNER. How is the gentlewoman from Texas recorded?
The CLERK. Mr. Chairman, Ms. Jackson-Lee is recorded aye.
Chairman SENSENBRENNER. Does Ms. Jackson-Lee wish to change her vote?
Ms. JACKSON-LEE. I think that is the correct vote, Mr. Chairman. Thank you for your kindness.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote? If not, the clerk will try again to report.
The gentleman from Maryland, Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Chairman SENSENBRENNER. The clerk will report.
The CLERK. Mr. Chairman, there are 15 ayes and 20 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
Mr. NADLER. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?
Mr. NADLER. Mr. Chairman, I am not sure how to characterize this. It is not an amendment, and it may or may not be a parliamentary inquiry.
Chairman SENSENBRENNER. Does the gentleman move to strike the last word?
Mr. NADLER. I suppose. The last word is always good.
Chairman SENSENBRENNER. I suppose the gentleman can be recognized for 5 minutes. [Laughter]
Mr. NADLER. Thank you.
Mr. Chairman, on the floor they are now debating the rule to the so-called "Pledge of Allegiance Bill." Now, that bill will be coming up for debate on the floor in a few minutes. That bill is a bill within the jurisdiction of this Committee. I realize that the bill was not reported out of Committee. I share what I take to be, what I have been told is the Chairman's annoyance at somebody for bringing the bill to the floor without going through this Committee.
But having said that, I do urge that the Committee should not be meeting when what is really a Committee bill is on the floor. Some of us, I as Ranking Member on the Subcommittee on the

Constitution, others, I am going to have to manage the bill in opposition. Others here will be participating in that debate.

I do observe—and let me just say one thing—I do observe we will be debating on the floor later today the veto override of the stem cell bill, which is not from this Committee, though I would like to participate in that, too. It might be more appropriate to recess this Committee until later in the day, finish it then, so that those of us on the Committee can participate in the debate on what is a Committee bill.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. NADLER. Yes, I will.

Chairman SENSENBRENNER. The Chair has said we have a very ambitious schedule today. The Chair is prepared to agree to the gentleman's request to recess the Committee after the vote on the rule until the completion of the pledge of allegiance bill, in exchange for a commitment by the Members of the Committee to expedite the consideration of the rest of the agenda today, meaning there is a recess if we can speed up the chatter on the other bills.

Mr. CONYERS. Would the gentleman from New York yield?

Mr. NADLER. I will yield, yes.

Mr. CONYERS. I congratulate the gentleman for raising this subject matter. I congratulate the Chairman for agreeing to a recess. I think I can speak for all of us on this side that we will move forward with all deliberate speed to expedite the proceedings that remain.

Chairman SENSENBRENNER. The Chair will state that "all deliberate speed" is at the speed of the eye of the beholder. [Laughter]

However, having said that, the Chair will recess the Committee during the general debate and vote on the amendments on the Pledge of Allegiance bill, but will also state we will not adjourn for the evening until the agenda is completed. So that might change the view of "all deliberate speed" in the eyes of my friend the Ranking Member, and those Members who are seated to his left or even his far left.

Mr. NADLER. Mr. Chairman, reclaiming my time, reclaiming my time, I do not believe that the use of the phrase "with all deliberate speed" had direct reference to the history of this country in the 1950's and 1960's with regard to speed. Having said that, I thank the Chairman for his consideration. I yield back.

Chairman SENSENBRENNER. Okay. Are there further amendments to the bill?

Ms. WATERS. I have an amendment at the desk, sir.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. To strike the last word.

Chairman SENSENBRENNER. For what purpose did the gentlewoman from California seek recognition?

Ms. WATERS. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, I have——

Ms. WATERS. It is Waters 085.

Chairman SENSENBRENNER. Okay. The clerk will report 085.

The CLERK. "Amendment to H.R. 3509 offered by Ms. Waters of California. Page 3, after line 14, add the following new paragraph:

(5) Employment Requirements: This Act does not apply to a civil action filed by a claimant for damage to property or damages for death or personal injury arising out of an accident involving a durable good if the use of such durable good by the claimant is required by the claimant's employer."

[The amendment follows:]

AMENDMENT TO H.R. 3509
OFFERED BY MS. WATERS OF CALIFORNIA

Page 3, after line 14, add the following new paragraph:

"(5) EMPLOYMENT REQUIREMENT.—This Act does not apply to a civil action filed by a claimant for damage to property or damages for death or personal injury arising out of an accident involving a durable good if the use of such durable good by the claimant is required by the claimant's employer.".

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman, this amendment seeks to fix the outdatedness of this legislation with respect to the industry lifespan of durable goods today, as well as the practical realities for many workers in the manufacturing industry itself. The H.R. 3509 statute of repose would bar civil suits for damages or death related to the use of durable goods outside an arbitrary 12-year period, irrespective of the circumstances of the use of this good.

I would urge my colleagues to accept my amendment because it takes into account the fact that the use of many durable goods contemplated in this legislation comprises a substantial part of many jobs in American manufacturing plants. As the bill is drafted, innocent employees would by implication waive their rights to sue manufacturers or sellers of durable goods by virtue of performing their jobs, which is unconscionable and in bad faith on the part of the Federal legislature.

To further illustrate my point, I offer a few examples, one in my home State of California. In 1995, Ronaldo Gonzalez, a printing press operator, had to have his arm amputated after it became caught in a printing press designed and manufactured by Heidelberg, Incorporated in 1973.

At trial, testimony revealed that the company added safeguards to the same printing press model both in 1974 and 1980, yet they never took steps to notify the prior owners of the machine's dangerous defect. By 1995, at least eight other pressmen either had their arms crushed or severed while operating the pre-1974 presses.

Now, if that did not convince you, I give the example of a worker in the Chairman's home State of Wisconsin while operating a meat grinder. In 1979, Dexter Hamilton's right hand became caught in the grinder and four of his fingers were severed by the grinder's blades. The Enterprise Manufacturing Company manufactured the grinder 20 years prior to Hamilton's accident. The jury found that Enterprise Manufacturing Company negligently designed and manufactured the grinder.

Mr. Chairman, these are but a couple of the many instances where workers have been severely injured on the job when, but for the negligence of either the manufacturer or the seller of the equipment used on the job, the injury could have been avoided. And therefore the claims of the worker should not be limited by bills such as H.R. 3509.

I would urge my colleagues to accept this amendment also because the workers' compensation system does not provide the best or most timely remedy for many workers, especially in my State.

Let me offer a few reasons why California workers need more than workers' compensation to provide relief when they are injured. Workers comp benefits in California are the lowest in the nation. For six out of ten workers with a permanent injury, overall benefits are so low that California has ranked 45th out of 50 States. Injured California workers have to go to court to get benefits 20 percent of the time, double the rate 20 years ago, and more than four times the national average.

Insurers mishandle half their claims. In one of every five cases, the insurer will not properly notify workers of benefits, and in one

of every six cases, workers will not be paid all the money they are owed, according to State audits. Fraud is overstated. While some insurance companies claim one out of three workers lie about their injury, or 33 percent, the actual number of fraud cases sent to prosecutors is less than one out of 100 or less than 1 percent.

California has had one information counselor for every 20,000 workers in the comp cases. No State agency again regularly monitors claims to see, for instance, whether insurance payments are received on time or whether injured workers are receiving appropriate medical care.

While I cite the California problems, there are many other States that are even worse. I would ask my colleagues to seriously consider this amendment and support it.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I won't take that full 5 minutes.

I strongly oppose this gutting amendment. This amendment would completely negate the portions of this bill that relate to injured workers because the only reason that a person would be working on a piece of machinery is that their employer required them to do so as part of their job. In fact, this amendment would have the curious effect of only applying the liability limiting provisions of this bill to employees who are injured by machines that they do not operate in the normal course of their jobs.

I would note once again that this bill ensures that no person will go uncompensated for an injury that they would receive at work, since the liability protections of this bill only apply in cases where the employee is covered by workers' compensation.

Since this amendment would gut the important liability protections of the bill, I would strongly oppose it and urge my colleagues to do so, and yield back the balance of my time.

Ms. WATERS. Will the gentleman yield?

Mr. CHABOT. I would be happy to yield.

Ms. WATERS. I would like to correct some of the information that you just shared with my colleagues about the bill. This bill simply would take care of those workers that are——

Mr. CHABOT. Reclaiming my time, did you say the bill, or are you talking about your amendment or the bill?

Ms. WATERS. My amendment. I am sorry, my amendment, of those workers who are injured by machines that have defects that have been discovered and then later taken care of or fixed, and the manufacturers did not tell the owners of those machines in those factories that have been using those machines prior to the time the problems were corrected, that they had been corrected later on. That is what this amendment does, so that is the correct description of it.

Mr. CHABOT. Reclaiming my time. What this bill does is it makes very clear that for 12 years beyond that period of time, there would not be liability because we have case upon case in which there have been lawsuits, some which have driven companies out of busi-

nesses, some that make the United States businesses less competitive. There is a whole range of reasons why I believe this legislation should be supported.

But I want to emphasize that any person who is injured on the job by one of these pieces of equipment, the only way that they would not be able to recover is if they have workers' comp coverage. The vast majority of the cases are going to have workers' comp coverage, and so there is really nobody who is going to lose out on this.

I yield back the balance of my time.

Mr. COBLE. [Presiding.] The question occurs on the amendment. All in favor say "aye."

Opposed, "no."

The noes appear to have it.

Ms. WATERS. rollcall.

Mr. COBLE. A rollcall has been requested. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

[No response.]

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no.

Mr. Jenkins?

[No response.]

Mr. Cannon?

[No response.]

Mr. Bachus?

[No response.]

Mr. Inglis?

[No response.]

Mr. Hostettler?

[No response.]

Mr. Green?

[No response.]

Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Mr. Issa?

[No response.]

Mr. Flake?

[No response.]

Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no.
Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
Mr. BERMAM. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher?
[No response.]
Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson-Lee?
Ms. JACKSON-LEE. Aye.
The CLERK. Ms. Jackson-Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. Delahunt?
[No response.]
Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye.
Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye.
Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Mrs. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Mrs. Wasserman Schultz, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Mr. COBLE. The clerk will report.
The gentleman from Wisconsin?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. COBLE. The gentleman from California?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Mr. COBLE. The gentleman from Utah?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. COBLE. The other gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. COBLE. The gentleman from Indiana?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. COBLE. Members on the minority side have not voted.
The gentleman from South Carolina?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no.
Mr. COBLE. Any Members? Mr. Bachus, the gentleman from Alabama, votes no.
The CLERK. Mr. Bachus, no.
Mr. COBLE. Not to be voting for him. [Laughter]
The clerk will report.
The CLERK. Mr. Chairman, I don't have a vote for Mr. Jenkins.
Mr. Jenkins, no.
Mr. Chairman, there are 15 ayes and 20 nays.
Mr. COBLE. And the amendment is defeated.
Are there further amendments? The distinguished gentleman from Virginia, Mr. Scott?
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk. It is number four.
The CLERK. "Amendment to H.R. 3509 offered by Mr. Scott. Page 3, after line 14, add the following new paragraph: (5) Normal Life Expectancy: This Act does not bar a civil action for damage to property or damages for death or personal injury arising out of an accident involving a durable good that has a normal life expectancy of more than 12 years."
[The amendment follows:]

AMENDMENT TO H.R. 3509

OFFERED BY MR. SCOTT

Page 3, after line 14, add the following new paragraph:

''(5) NORMAL LIFE EXPECTANCY.—This Act does not bar a civil action for damage to property or damages for death or personal injury arising out of an accident involving a durable good that has a normal life expectancy of more than 12 years.''.

Mr. COBLE. Mr. Scott is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would add an exception to the bill and permit civil actions for damage to property or damages for death or personal injury arising out of an incident involving a durable good that has a normal life expectancy that exceeds 12 years.

The fact is that if the useful life of a product is longer than the repose period, then we have no business imposing a statute of repose and limiting the ability of a plaintiff to bring a perfectly legitimate lawsuit.

For example, if a product has a normal life expectancy of 20 years and there is damage to property after the repose period in the bill, but before those 20 years are up, then a plaintiff ought to be able to bring a suit whether or not there is an express warranty in writing. Of course, the burden of proof is on the plaintiff to prove that the injury was caused within the normal life expectancy of the product.

As written, the bill would completely eliminate rights of workers to hold manufacturers and sellers accountable when they are injured by a defective product that is more than 12 years old regardless of how long the product was built to last. Many items today, such as industrial machinery, farming equipment, construction tools, are made to last longer than 12 years. Limiting the rights of those consumers in this way does nothing to promote justice.

Mr. Chairman, whether or not we adopt this amendment, excuse me, without this amendment, this bill would shift the cost of injury from the producer who is reasonably expected to be able to know the useful life of the product, to those who are the injured party. The one causing the damage is obviously immunized, even if it is willful or reckless. He has no responsibility to the victim or reimbursing his workers' comp.

Mr. Chairman, this is a unique piece of legislation because usually if there is negligence by an outside group, the employer can get workers' comp, but if he files suit there is subrogation. This immunizes an unrelated party so if there is a catastrophic injury, those who are actually working on the job get nothing, and those who are not working on the job can recover as usual and the bill will have no effect.

I would hope, Mr. Chairman, that this bill would allow the employees to have the same rights as everybody else to recover for injuries at least when the product was within its useful life. So Mr. Chairman, I would hope that we would adopt this amendment and allow those to recover when they have a legitimate lawsuit.

Mr. COBLE. I thank the distinguished gentleman from Virginia.

The distinguished gentleman from Ohio?

Mr. CHABOT. Thank you.

Mr. COBLE. You are recognized for 5 minutes.

Mr. CHABOT. I am going to strike the last word. Thank you.

I strongly oppose this amendment, as well. This one truly guts the bill. This amendment would create an exception to the 12-year statute of repose applicable to workplace durable goods if the product has a normal life expectancy of more than 12 years. The effect of this exception would be to eliminate the bright-line test that H.R. 3509 creates. H.R. 3509 provides an absolute bar on suits that

arise from damages that occur 12 years after a product was delivered to the first purchaser or lessee.

This straightforward guideline can be applied easily, consistently, and fairly. By contrast, this amendment would require companies to litigate the issue of the normal life expectancy of their products. The goal of the bill is to reduce the litigation costs of manufacturers and this amendment puts companies back in the position that they are today.

This is more than a simple issue of pleading. Defendants in such claims would have to show, among other things, the affect of wear and tear from natural causes, the evolution of the state of the art in that particular industry, the climatic and local conditions where the product is used, the repair policy of the end-user, and any modifications made by the end-user.

All of these elements require extensive discovery and experts and other defense costs. As a consequence, companies would like be forced to settle these claims, rather than incur massive defense costs, which increases the cost of the product, the cost to the ultimate consumer.

The bill provides, the bill that we are talking about here, not the amendment, but the bill provides relief from wasteful litigation precisely because it relies on a fixed, objective 12-year statute of repose. Incorporating a normal life expectancy standard into the bill would introduce fact-specific inquiries into every case, and remove all the benefits of uniformity, which is what this bill brings.

Those are the benefits of the 12-year statute of repose. To bring this particular issue up and to have state of the art would be the opposite of what this bill is trying to accomplish. And so I strongly urge my colleagues to oppose this amendment.

I yield back the balance of my time.

Mr. COBLE. The gentleman yields back.

The distinguished gentleman from New York?

Mr. WEINER. I won't take much time. I am just fascinated by the idea——

Mr. COBLE. Do you strike the last word?

Mr. WEINER. Yes, I do.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. WEINER. I am fascinated by the idea that consistency is such a high ideal. In fact, in court cases it is the opposite paradigm that you are always looking for, the individual facts that you are trying to learn about a case, an individual pattern. Since when is consistency for the sake of consistency more important than getting it right?

What we should be trying to do is ensure that we get it right, that people who are harmed are made whole; that people who are not, are not. And that is why we have this fascinating concept in this country, it has never been fully embraced by my colleagues on the other side, of allowing juries and judges to hear cases, to make determinations, and to use their judgment.

I am fascinated by the idea that we trust our constituents to vote for us, but when they get in a jury box, oh, they can't figure it out. We have to take away anything we can from them. We are just runaway juries and runaway judges. Our constituents are fairly smart enough and brilliant enough and intuitive enough to vote for

their representatives, but heaven forbid we trust them to figure out the facts and a pattern of facts in a jury.

I don't believe, frankly, that if the only opposition that you have to the Scott amendment is it makes issues more important to the case than our high-and-above, top-of-the-pyramid judgment here. I don't think that is a legitimate reason to be opposed to the amendment. I think frankly we should have the ability to discern individual facts in individual cases to form individual conclusions, because it is possible, although I doubt it, it is possible we don't know everything here.

Mr. CHABOT. Will the gentleman yield?

Mr. WEINER. Oh, certainly I will.

Mr. CHABOT. I would ask the gentleman, does the gentleman believe in the concept, for example, of statutes of limitation, which may be 2 years for a personal injury, and other things of that nature where you have to have some rules that you can rely upon, or you could be sued into infinity? Does the gentleman agree with those types of concepts?

Mr. WEINER. Listen, I am not saying that there are not certain moments that you have to set arbitrariness, but this is fairly fundamental to whether a case is worthy or not. This is not like a statute of limitations that you have to say at some point when is it simply not fair to bring a trial anymore because the fact pattern is too difficult to discern, hard to find witnesses, memories fade.

This is a seminal point about whether or not a product, you are going to hold someone liable, how old something is in comparison to how old it should be before it is deemed to be obsolete or the like.

I yield back my time.

Mr. COBLE. The gentleman's time has expired.

Mr. WATT. Mr. Chairman?

Mr. COBLE. The distinguished gentleman from North Carolina, Mr. Watt? For what purpose do you rise?

Mr. WATT. I move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. WATT. I won't take 5 minutes. I just want to point out that this amendment actually exposes the arbitrariness of the 12-year statute. There is nothing magic about 12 years, obviously. It could be 10 years. It could be 6 years. It could be 18 years.

Mr. CHABOT. Would the gentleman yield for a second?

Mr. WATT. I am happy to yield.

Mr. CHABOT. I thank the gentleman for yielding. I would just note that 12 years, one of the principal reasons we picked that is because that is what those States that have acted on this, that is the consensus of most of the States in this area.

Mr. WATT. I am sure there is a rational reason that you picked it. My point is that there is nothing magic about it. It happens to be substantially longer than the statute of repose in North Carolina. So I don't know that there is anything magic about it.

I am not saying that it is irrational to pick a time period. I am just saying that any arbitrary time period that we set is just arbitrary. If the purpose was to pair up the responsibility of people, of employers or manufacturers based on the duration of the effective use of the product, this amendment makes more sense than just grabbing a year out of space here and putting it in the statute.

And if we are going to have any sense of responsibility, I think it is this amendment that really makes the most sense here because I thought what we were trying to do was pair up the expected life of a piece of equipment, and not have manufacturers and employers have responsibility beyond that life expectancy, rather than just picking a number out of the sky and putting it in a bill.

Mr. CHABOT. Would the gentleman yield?

Mr. WATT. I am happy to yield to the gentleman.

Mr. CHABOT. I would once again just note that we didn't pick it out of the sky. If you look, for example, at the European Union, you look at Japan, South Korea, those are 10 years.

Mr. WATT. I definitely want to follow South Korea in deciding what I do.

Mr. BERMAN. Would the gentleman yield?

Mr. WATT. I am happy to yield to the gentleman from California.

Mr. BERMAN. I was taken by the gentleman's point earlier. Our judges should do nothing to look at the laws of other countries in coming to their own judicial conclusions, but our legislators should spend a lot of time studying what other countries do before we come to our decisions on legislation.

Mr. CHABOT. Would the gentleman yield?

Mr. BERMAN. It is a very interesting distinction.

Mr. WATT. I am happy to yield to the gentleman from Ohio again.

Mr. CHABOT. Again, I will just make the point that we are competing with those countries, and our companies are competing on a daily basis.

Mr. WATT. I am sure we are. I am not arguing that fact. But if we are going to select their standard, we ought not have a standard in a lot of these cases. That is the point that Mr. Issa was making earlier. Maybe we shouldn't have a standard at all if we are just going to go around the world and try to be competitive.

This is about trying to fashion our law, the burden on manufacturers, consistent with the period of time that their piece of equipment that they manufactured is likely to be in use and in the stream of trade. That is what a statute of repose is supposed to be about, not just picking a number out of the sky, and not about South Korea or Russia or China or any of that.

Now, I am happy to yield to the gentleman from California. I am sure he has some words of wisdom on this.

Mr. LUNGREN. I am just trying to find out whether the gentleman is arguing that we ought to accept the North Carolina number, which is 6 years for the manufacturers of all goods, including furniture.

Mr. WATT. My friend, I guarantee you, before this debate is over, you are going to hear that argument because I will tell you in no uncertain terms that the legislators in North Carolina have made a lot more sense than this group of people in this Committee are making on this issue. And you are going to hear it. Make no mistake about it. If you think this is about the substance of the time, this is not even about that. This is about whether we ought to be making this decision, as opposed to State legislators.

You all, of all the people who came riding here on the States' rights horse, ought to be the last people that are supporting this

bill. I mean, it is absolutely inconsistent. You will get your time to hear me make that argument. This is on this amendment, but you will get that argument and I will be happy to yield to you again at that point.

Mr. COBLE. The gentleman's time has expired.

Without objection, the gentleman is allotted an additional minute.

Mr. WATT. I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you.

I would also note that whatever the statute of repose is in North Carolina is in the context of everything else they do, whether they have joint and several liability, whether they have limits in liability, whether they have collateral source rules and everything else. They have over the course of time balanced the consumers and the wrongdoers, and the statute of repose is part of that. This just comes out of the blue on top of everything, without any context at all.

Mr. WATT. I yield back.

Mr. COBLE. The gentleman's time has expired.

The question occurs on the amendment. All in favor say "aye."

Opposed, "no."

The noes appear to have it. The noes have it, and the amendment fails.

Are there additional amendments? The distinguished gentleman from Virginia, Mr. Scott, is recognized. For what purpose do you seek recognition?

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk: In Section 2, striking paragraph (a)(1).

Mr. COBLE. The gentleman from Virginia is recognized for 5 minutes to explain his amendment.

Mr. SCOTT. Do you have that amendment? Okay. Mr. Chairman, has the amendment been reported?

Mr. WATT. Report the amendment, Mr. Chairman.

Mr. SCOTT. Mr. Chairman, I was recognized for an amendment. I don't think it has been reported yet.

Mr. GALLEGLY. [Presiding.] The clerk will report the amendment please.

The CLERK. "Amendment to H.R. 3509 offered by Mr. Scott of Virginia. In Section 2, strike paragraph (a)(1) and redesignate accordingly."

[The amendment follows:]

Amendment to H.R. 3509
Offered by Mr. Scott of Virginia

In Section 2, strike paragraph (a)(1) and redesignate accordingly.

Mr. GALLEGLY. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, the terms of H.R. 3509 do not currently apply to persons who sustain injury from overage products and equipment if those persons are bystanders. This amendment would also protect the property of those innocent bystanders. It is reasonable that an innocent bystander could not only suffer physical injury, but also significant property damage. It is only fair that they have the right to recover from property damage, as well as injury.

Mr. Chairman, if you look at what would happen if a wheel came off a truck, even if willful and reckless, and strikes a bus, causing a severe accident because of the negligence of the manufacturer. In that case, the passengers of the bus could sue. The bus driver would be stuck with workers' compensation. The bus owner maybe or maybe not, it is a little unclear, might get some business losses. But the bus owner would get no recovery for damage to the bus.

Since the goal seems to be to limit recovery for those hard-working individuals because they might get a little workers' compensation, we ought not totally prohibit recovery for property damage by innocent bystanders. I would hope that we would adopt the amendment, and I yield back.

Chairman SENSENBRENNER. [Presiding.] The question is on the——

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. I would oppose this amendment as well. The amendment would have the effect of stripping the liability protections of this bill for any damage to property that is caused by workplace durable goods. This means that the manufacturers and sellers of workplace durable goods would continue to be exposed to significant long-tail liability for machines that have long since left their control.

Oftentimes, these machines have been significantly modified by the customer, without the knowledge of the original manufacturer, and those modifications are often the reason that these machines break in the first place. This amendment would have the effect of continuing to subject the original manufacturer to liability exposure for these machines that have been significantly modified. Because of this amendment, it would abrogate the important policy rationale of this bill. I would oppose it.

Furthermore, I would like to note that this bill is supported by the National Federation of Independent Business, an awful lot of small companies all over this country, and represents over 600,000 small businesses in the United States. I would submit that if the nation's leading advocate for small business is supportive of this bill and opposed to this amendment, including the property damage provisions of this amendment, that it would strip them, that is a pretty strong endorsement for keeping this bill whole as it is now. So I would oppose this amendment.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I would yield, yes.

Mr. SCOTT. The gentleman mentioned that the manufacturer would be on the hook long past the statute of repose. Isn't it true that he is on the hook if the damage is personal injury?

Mr. CHABOT. Would the gentleman restate that?

Mr. SCOTT. Isn't the manufacturer on the hook for personal injury liability long past the statute of repose?

Mr. CHABOT. Reclaiming my time, if I understand the question——

Mr. SCOTT. So long as the victim is not covered by workers' comp.

Mr. CHABOT. Yes, that is correct. Of course. The people that would not be covered are only those that are not covered by workers' compensation. That is right.

Mr. SCOTT. So that the liability of the manufacturer still extends well past the statute of repose for injuries, but not property damage.

Mr. CHABOT. If they are not covered by workers' compensation.

Mr. SCOTT. But not property damage?

Mr. CHABOT. You don't cover property on workers' compensation.

Mr. SCOTT. That is right, but the innocent bystander can sue for injuries, but not for property damage.

Mr. CHABOT. The innocent bystander wouldn't be covered under workers' compensation. Therefore, could still recover. That is correct.

Mr. SCOTT. But not for property damage?

Mr. CHABOT. Correct.

Mr. SCOTT. And this amendment would allow him to get property damage, as well as personal injury.

Mr. CHABOT. I think we have restated this time and time again. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott.

Those in favor will say "aye."

Those opposed, "no."

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments? If there are no further—the gentleman from North Carolina, for what purpose do you seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I haven't offered an amendment, but I want to rise in strong opposition to this bill. If I were worried about the result, I would sit here and be quiet because this 12-year statute of repose actually improves, from my perspective, North Carolina law. It extends it from 6 years to 12 years. And so this is not about the result. It is about protecting a system that I had thought that a number of my colleagues came into Congress advocating to preserve.

The problem here is that there are a couple of principles that I think are being severely violated here. One is personal injury law. Tort law has long been considered the private province of States, rather than the Federal Government. So we are violating that principle. Personal injury law has been about trying to make the per-

son who is most responsible and therefore has the most ability to prevent injury be responsible. We are violating that principle here.

And so I just think we have lost our way in the interest of trying to accommodate business interests, make things consistent on a national basis. We have ignored some principles that are very important.

Now, let me tell you the way this gets done in North Carolina and why I doubt if there are North Carolina small businesses that are supporting this. They understand what it is they are doing. We are shifting responsibility here in North Carolina from the manufacturer's liability insurance carrier to the workers' compensation insurance carrier because once the workers' compensation carrier pays in North Carolina, the workers' compensation carrier has the right to subrogate against the actual responsible party, which was the manufacturer. They can go and get their money back.

Why would we set up a system that punishes the workers' compensation carrier, the least likely carrier to be able to prevent the injury, and reward the general manufacturer's liability carrier if we are concerned about assessing the risk and responsibility, that is you all's word, to the people who can and should be the most responsible?

This, our law in North Carolina has been, you know, it is 6 years rather than 12 years, but at least the members of the State legislature have spent some time thinking about how to balance these interests. And thinking about who ought to be responsible for paying, because they are worried about who has the most interest in creating a safe work environment, creating a safe product, and they are not shifting that cost to the workers' compensation carrier because the workers' compensation carrier in this case really can't do anything about it.

So I just think this whole notion that setting a national standard in this case is contrary to everything that we say, and you say you believe in. And I just think this statute is probably the worst example of violating the things that we say we stand for of any of these bills. I encourage my colleagues to vote against it.

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Iowa, Mr. King, seek recognition?

Mr. KING. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I wanted to raise this issue. I rise in support of this bill as put together by Mr. Chabot. There has been a lot of work put in this. It has been a long time and he deserves a lot of credit for what he has done. If I were to seek to improve it, it would be to lower the 12-year statute of repose to 10 years because I believe that is more the international standard.

I will support it in this form and I will be looking forward to an opportunity, perhaps, to improve it closer to an international standard. But I want to make it clear that Mr. Chabot has done a lot of work. This country needs this legislation and I support it in any form, in his form, in the final passage if necessary.

Thank you, and I yield back.

Chairman SENSENBRENNER. Are there further amendments?

Ms. WASSERMAN SCHULTZ. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Florida seek recognition?

Ms. WASSERMAN SCHULTZ. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you.

Mr. Chairman, you know, instead of focusing on the needs of everyday Americans, we are here today discussing a bill that will hurt blue collar workers and cripple family farmers. If this bill were to become law, forklift and tractor manufacturers would have no incentive to design safe products that last.

This bill creates economic incentives to cut corners and erode product safety. There are many responsible manufacturers in the market, but this bill essentially gives the green light to unscrupulous firms to design weaker, more dangerous equipment. All the window dressing and debate around that isn't going to change that fact.

This bill creates a strong financial incentive for irresponsible businesses to manipulate the truth about dangers in their products, especially when defects are discovered late in a product's life. And who would pay the price for this? Construction workers at their jobsites; miners underground; workers on the assembly line; and farmers in the fields, not to mention loggers, firefighters and everyone else who works with heavy machinery.

And how will they pay? They will pay in large and small ways with severed limbs, crushed bodies, broken bones and burned skin. They will pay in lost work, in medical bills, in stolen livelihoods, and broken dreams.

Let's take, for example, Priscilla Williams, who is a 55-year-old worker from my home State of Florida. One day while working at a laundromat, her right hand was seared to the bone by a 14-year-old steam press. Her injury would have simply prevented by an inexpensive safeguard that the manufacturer neglected to install. Under this legislation, she would not have had any claim, and now she is permanently disabled.

And what would this bill offer her? Workers compensation. That is all it would offer her. In my home State of Florida, workers' compensation only pays 66 percent of a worker's wages. Who among us could take more than one-third pay cut for the rest of their lives? Almost no one. At a time when the cost of health care is spiraling out of control and wages and benefits are flat or declining, and will remain so given the defeat of the minimum wage amendment that Mr. Issa said he was for before he was against, we should be lifting working families up.

This is what Republicans are offering American workers. This bill is not tort reform. It is the worst kind of corporate giveaway because it comes at the expense of honest, hard-working blue collar Americans. I urge my colleagues on both sides of the aisle to consider how this bill would hurt folks back home. Who do we really want to put first? Major corporations or people? I vote for people, and I am going to vote against this legislation.

I yield back the balance of my time.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I can't let some of these comments go really uncommented upon myself. The arguments, some of the arguments that are being made rest on the false premise that State tort law it the only reason that manufacturers make safe products.

Competitive market pressures encourage manufacturers to design and build the best possible durable goods. This includes safety. After all, if a manufacturer develops a reputation for building machines that routinely cause employees to miss time due to injuries, they are unlikely to sell many of those machines.

However, as a practical matter, a 12-year statute of repose creates an incentive for manufacturers to design and construct a machine to function smoothly and safely for as long as technically possible because this gives the manufacturer the longest period of liability protection under the bill.

Manufacturers would not be tempted to beat the clock by designing machines that safely work for only 12 years because they are still fully subject to suit for that product for the first 12 years of its life. If the company guesses wrong and designed a product that only lasted for 11½ years they could be subject to a bankruptcy-inducing jury verdict.

Further, if it became known that the manufacturer was knowingly making workplace durable goods that were designed to be safe only for 12 years, and to then become workplace hazards, they could well be subject to State or Federal regulatory enforcement actions which would not be prevented by this bill.

We have heard a number of stories in which injuries have occurred to various employees. When this bill was considered back in the 106th Congress, opponents brought forth a number of claimed horror stories where injured workers would be, in their words, harmed by this bill. However, upon closer inspection, the facts of many of these cases as they actually were, including an employer's modification of machinery, as well as an employee's contributory negligence in the accident in some instances, were conveniently eliminated from description of the cases.

I am not going to try and refute every case that the opponents of this bill bring forth, but I will say that no one will go uncompensated under this bill, and it will protect a number of innocent manufacturers who face bankruptcy from meritless suits.

I yield back the balance of my time.

Chairman SENSENBRENNER. Are there further amendments? If there are no further amendments, a reporting quorum is present.

Those in favor of the motion to report the bill, H.R. 3509, favorably as amended will say "aye."

Those opposed, "no."

The ayes appear to have it.

Mr. SCHIFF. Mr. Chairman, I would like a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of reporting the bill as amended favorably will, at the call of your name, answer "aye"; those opposed, "no."

And the clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
Mr. Coble?
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye.
Mr. Smith?
[No response.]
Mr. Gallegly?
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye.
Mr. Goodlatte?
[No response.]
Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Mr. Lungren?
Mr. LUNGREN. Aye.
The CLERK. Mr. Lungren, aye.
Mr. Jenkins?
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.
Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye.
Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye.
Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye.
Mr. Flake?
[No response.]
Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye.
Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye.
Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Feeney?

Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye.
Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye.
Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye.
Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Berman?
Mr. BERMAM. No.
The CLERK. Mr. Berman, no.
Mr. Boucher?
[No response.]
Mr. Nadler?
[No response.]
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson-Lee?
[No response.]
Ms. Waters?
[No response.]
Mr. Meehan?
[No response.]
Mr. Delahunt?
[No response.]
Mr. Wexler?
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no.
Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no.
Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Ms. Sanchez?
Ms. SANCHEZ. No.
The CLERK. Ms. Sanchez, no.
Mr. Van Hollen?
[No response.]
Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there further Members who wish to cast or change their votes? The gentleman from Texas, Mr. Smith.

Mr. SMITH. I vote aye.

The CLERK. Mr. Smith, aye.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan?

Mr. MEEHAN. No.

The CLERK. Mr. Meehan, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

While the clerk is adding it up, the Chair intends to recess the Committee once we announce the result of the vote, and pleads to the Members to be prompt coming back immediately after the vote on the Pledge Protection bill.

The gentleman from Alabama, Mr. Bachus, wishes to vote? Okay. Further Members who wish to cast or change their vote?

The clerk will report.

The CLERK. Mr. Chairman, there are 21 ayes——

Chairman SENSENBRENNER. The gentleman from Maryland, Mr. Van Hollen?

Mr. VAN HOLLEN. No.

The CLERK. Mr. Van Hollen, no.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 21 ayes and 12 nays.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting, supplemental or minority views.

Without objection, the Committee is recessed until immediately after the vote on final passage of the pledge bill. The Chair pleads with the Members to be prompt. We have three more bills we have to act on today, and we will be here until we are finished with them.

Without objection, this Committee stands recessed.

[Intervening business.]

Without objection, the Committee stands adjourned.

[Whereupon, at 4:02 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly oppose H.R. 3509, the "Workplace Goods Job Growth Competitiveness Act of 2005," which would preempt state law to establish a nationwide 12-year statute of repose for "durable goods," [1] thereby barring any recovery by employees for death or personal injury stemming from an accident to such goods.[2] H.R. 3509 is opposed by organized labor groups, such as the AFL–CIO [3] and public interest groups, such as Public Citizen, Alliance for Justice, Center for Justice & Democracy, Consumer Federation of America, Consumers Union, Public Citizen, U.S. Public Interest Research Group [4], and the National Conference of State Legislatures.[5]

Like many tort "reforms" being sought by the majority, H.R. 3509 would discourage corporate responsibility by cutting off the rights of injured victims to obtain full recovery. A statute of repose is perhaps the most perilous type of such tort "reform" because it operates to totally cut off any right of action against the manufacturer after a 12-year period has elapsed, regardless of whether or not the potential injured party has suffered an injury yet and regardless of how long the product was built to last.[6] The legislation also raises a host of serious federalism and constitutional issues. For these and the reasons set forth herein, we dissent from H.R. 3509.

I. H.R. 3509 harms American workers by denying them adequate compensation for their injuries and treating them differently than other harmed parties

H.R. 3509 denies workers adequate compensation for their injuries. As the AFL–CIO has written, the bill "is purely and simply an effort to discriminate against workers injured or killed on the job by preventing them or their survivors from recovering damages

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[1] "Durable goods" are defined as products that are expected to last more than three years and that are used in a trade or business, or by the government.

[2] The legislation does not apply to workers if they are ineligible to receive workers' compensation, or if the injury involves a "toxic harm." The legislation also provides exceptions for (1) motor vehicles, vessels, aircraft or trains used primarily to transport passengers for hire, (2) actions based on an express warranty in writing for longer than 12 years, and (3) the limitation period established by the General Aviation Revitalization Act of 1994. The statute of repose, which applies 12 years after the first purchase or lease of the durable good, also applies to employer actions with regard to "property damage," but not other types of harm to employers, such as business interruption.

[3] See Letter from William Samuel, Director, Department of Legislation, American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO"), to Chairman James Sensenbrenner, Jr. And Ranking Member John Conyers Jr. (March 27, 2006) (on file with the Democratic staff of the House Judiciary Committee) [hereinafter AFL–CIO Letter].

[4] See Letter from Alliance for Justice, Center for Justice & Democracy, Consumer Federation of America, Consumers Union, Public Citizen, and U.S. Public Interest Research Group ("U.S. PIRG") to House Judiciary Committee Members (March 28, 2006) (on file with the Democratic staff of the House Judiciary Committee) [Public Interest Group Letter].

[5] See Letter from the National Conference of State Legislatures to Chairman James Sensenbrenner and Ranking Member John Conyers, Jr. of the House Committee on the Judiciary (March 28, 2006) (on file with the Democratic staff of the House Judiciary Committee).

[6] See generally, 63a Am. Jur. 2d, Products Liability §§ 921–923; Am. Law. Prod. Liab. 3d, Limitation of Actions: Statues of Repose §§ 47:55–47:76

from a manufacturer or seller of durable goods more than 12 years after the durable good was delivered to its first purchaser or lessee."[7]

While H.R. 3509 applies only to injured workers who are covered by workers' compensation, for those workers, recovery for harm suffered can be drastically limited. This is because state workers' compensation laws usually only provide for medical costs and limited disability payments—they do not provide for compensation for non-economic damages, such as loss of fertility, loss of a limb, permanent disfigurement and other forms of pain and suffering.[8] As the public interest groups explain in their letter:

> H.R. 3509 would override many state laws that allow injured workers to sue manufacturers of older defective products and recover full damages for the harm caused. It would discriminate against workers, especially those in states that have cut their workers' compensation benefits in recent years. Workers who do receive workers' compensation benefits will, nonetheless, be denied any damages for their pain and suffering.[9]

H.R. 3509 also unfairly singles out American workers, treating them differently from other injured persons. Thus, for example, if a 25-year old elevator malfunctions and crashes, killing a custodian and a visitor, the bill would allow the visitor's family to sue, but would bar the custodian's family from seeking compensation in court. This is illogical and inequitable and provides an unjustified economic windfall to the elevator manufacturer.

Moreover, it is inherently unfair in that the statute of repose only applies to workers injured on the job—while business owners would still have their full rights under state law to recover for business interruptions due to defective machinery.[10] As the professor Andrew Popper states in his testimony before the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law:

> The bill punishes consumers and workers, not for filing at the wrong time or bringing claims with questionable merit, but rather for being injured by a defective product at the wrong moment in time.[11]

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[7] See AFL–CIO Letter.

[8] See, e.g., Health v. Sears, Roebuck & Co., 464 A.2d 288 (N.H. 1983). Even in the area of economic damages, workers compensation laws can be lacking. For example, a 1998 study of California's workers' compensation laws by the RAND Institute for Civil Justice concluded that because wage losses persist and benefit payments run out, workers compensation benefits compensated less than 40% of workers' full economic losses over a five-year period after the accident.

[9] Public Interest Group Letter.

[10] Although, as noted, businesses would be entitled to bring business interruption lawsuits, they would be barred from recovery for property damage when older equipment fails and damages the workplace, and they would no longer be able to recover the funds paid to an injured employee through workers' compensation. Currently, employers may recover these workers' compensation payments from any damages awarded the employee in court, ensuring that employers and workers' compensation systems do not subsidize manufacturers of defective products.

[11] See Hearing on H.R. 3509, the Workplace Goods Job Growth and Competitiveness Act of 2005 Before the Comm. on Judiciary, Subcomm. on Commercial and Administrative Law (March 14, 2006) (Statement of Professor Andrew Popper, American University, Washington College of Law) [hereinafter professor Popper Testimony].

Our concerns are not theoretical, they are very real. The following are just two examples of actual cases that would have been completely barred under this legislation.[12]

• In California in 1995, Reginaldo Gonzalez, 47, was operating a printing press designed and manufactured in 1973 by Heidelberg, Inc., when his hand became caught in the rollers, resulting in the traumatic amputation of his arm at the shoulder. The company added safeguards to this printing press model in 1974 and again in 1980, but never took steps to notify prior owners of the machine's dangerous defect. As a result, by 1995, at least eight pressmen had their arms amputated or crushed while operating pre-1974 presses. A jury found the early design defective and the company's conduct negligent, and awarded Gonzalez $4.1 million. Under H.R. 309, this case would have been barred, and the manufacturer of the rollers would have no legal responsibility to minimize the dangers inherent in their product.

• In Massachusetts, on April 13, 1984, John Jones was bending material in a press brake designed and manufactured by Cincinnati, Inc., in 1966 when the unguarded press suddenly closed, crushing his hands. The court awarded Jones $500,000, finding that Cincinnati was aware that press operators would have their hands in vulnerable positions while operating this machine, and that the manufacturer was reckless for not incorporating safeguards (available to the manufacturer in 1966) into the press's design that could have prevented the accident. Again, under H.R. 3509, Mr. Jones would have been awarded no compensation for the loss of this hands, other than the minimal recovery available under workers compensation.

In addition to harming workers, the bill transfers legal responsibility from the manufacturer of the machine tool to the employer, providing a legal disincentive for such manufacturers to publicize and fix defective older products that are still in use. Moreover, under the legislation a fix that requires a new component might set a new 12-year clock running, providing further disincentives for a manufacturer to cure product defects late in the statutory period.

II. H.R. 3509 raises serious federalism as well as possible constitutional concerns

We are also concerned by the majority's failure to consider or take into account the very serious federalism and constitutional concerns raised by this legislation. Since Congress has traditionally deferred to the states regarding tort law in general and product liability law in particular, preempting state law regarding statutes of repose would constitute a dramatic shift in this balance.[13] Noting this federalism concern, Assistant Attorney General Eleanor D. Acheson testified at the hearing of a previous incarnation of this legislation:

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[12] See Hearing on H.R. 1875 and H.R. 2005 Before the Comm. On the Judiciary, 106th Cong. (1999) (Statement of Tom Bantle, Legislative Attorney, Public Citizen) [hereinafter Public Citizen Testimony].

[13] Supporters may argue that the General Aviation Revitalization Act of 1994 should serve as a precedent with its federal 18 year statute of repose, however, that law was specifically crafted to react to the specific circumstances in the general aviation industry, such as ubiquitous federal regulation and the fact that private planes are fully rebuilt on a periodic basis.

> This proposed national statute of repose would extinguish valid lawsuits that would otherwise be permitted to proceed under state law. This sort of intrusion into the availability of state tort remedies is inappropriate absent compelling and well-documented evidence that the defendants' need for civil immunity outweighs the strong policy that individuals and businesses be able to seek relief for their injuries.[14]

It should therefore come as no surprise that a whole host of constitutional concerns are also raised by the legislation. First, the bill—which contains no interstate commerce jurisdictional requirement—may run afoul of the constitutional requirement under Article I, clause 8,[15] limiting congressional authority to the regulation of interstate commerce and under the Tenth Amendment, reserving all of the unenumerated powers to the States.[16] This is a particular concern in light of recent Supreme Court decisions such as Lopez v. United States (striking down a federal gun-free school zone law which had no interstate commerce requirement),[17] New York v. United States[18] and Printz v. United States[19] in which the Court showed extreme scepticism regarding Congress's ability to dictate state legal policies.

There is also the potential that H.R. 3509 may implicate Fifth Amendment due process[20] and Seventh Amendment right to trial[21] issues. The due process concern stems from the fact that the leading Supreme Court case, Duke Power Co. v. Carolina Envtl.

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[14] See Hearing on H.R. 1875 and H.R. 2005 Before the Comm. On the Judiciary, 106th Cong. (1999)(Statement of U.S. Department of Justice Assistant Attorney General Eleanor D. Acheson)[hereinafter DOJ Testimony].

[15] Article I, Section 8 of the Constitution provides, inter alia, "Congress shall have Power . . . To regulate Commerce with foreign Nations and among the several States . . . ." U.S. Const. art I, § 8, cl. 3.

[16] The Tenth Amendment provides "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend X.

[17] 514 U.S. 549 (1995). In Lopez, one of the problems with the school gun ban was that it contained "no express jurisdictional element which might limit its reach to a discrete set of firearms possessions that additionally have an explicit connection with or effect on interstate commerce." When Congress acted in 1996 to remedy the constitutional infirmity in the school gun ban invalidated by Lopez, it limited the law to firearms that have "moved in or that otherwise [affect] interstate or foreign commerce." 18 U.S.C.A. 922(q)(2)(A) (1994) (amended 1996). See also, Employers Liability Cases, 207 U.S. 463 (1907) (striking down federal tort law concerning common carriers which preempted state tort law on interstate commerce grounds); T.R. Goldman, Lopez Gives Tort Reform a New Weapon, Legal Times, May 8, 1995, Tort Reform Notebook, at 2 (quoting Harvard Law School Professor Laurence Tribe for the proposition that "Lopez is a reminder that the commerce clause is not a blank check. As such, it will operate to at least raise significant questions about some of the elements of proposed tort reforms pending in Congress").

[18] 505 U.S. 144 (1992) (invalidating a federal law requiring States to assume ownership of radioactive waste or accept legal liability for damages caused by the waste because it was found to "commandeer the legislative processes of the States").

[19] 521 U.S. 898; 117 S. Ct. 2365; 138 L.Ed. 2d 914; 65 U.S.L.W, 4731 (U.S. June 27, 1997)(invalidating portions of the Brady Act requiring local law enforcement officials to conduct background checks on prospective gun purchasers).

[20] The Fifth Amendment provides that no person shall be "deprived of life, liberty, or property without due process of law," a proscription which has been held to include an equal protection component. U.S. Const. amend. V.

[21] The Seventh Amendment provides, "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." U.S. Const. amend VII.

Study Group,[22] left open the question as to whether it is was necessary for federal tort laws to provide an offsetting legal benefit or quid pro quo to justify the deprivation of tort rights (which the legislation does not appear to do). As for the Seventh Amendment, although the right to jury trial has been found not to apply to federal limitations imposed on state courts, the Seventh Amendment could apply to diversity cases brought in federal court, particularly if a statute of repose is seen as extinguishing a "common law" right.[23] In this regard, it is telling that in nearly half of the states that have enacted product liability statutes of repose, the state supreme courts have overturned them because they were found to violate state constitutional requirements relating to due process, equal protection and open access to courts.[24]

CONCLUSION

H.R. 3509 creates a statute of repose that unfairly singles out American workers and denies them full recovery for their injuries. Under the legislation, American workers maimed and killed by defective products would find themselves limited to workers compensation remedies and totally barred from obtaining damages for their pain and suffering, unlike every other category of injured person.

This legislation is being propounded by the majority in the absence of any credible evidence that a systemic problem exists with regard to lawsuits concerning durable goods and with no corresponding understanding of the bill's impact on workers, their families, and their employers. In our view, we do not believe a threshold has been met which would justify such a significant intrusion into the state product liability system.

III. Description of amendments offered by Democratic members

During the markup, there were nine amendments offered by Democratic members. One amendment by Mr. Conyers, five amendments by Mr. Scott, one by Mr. Schiff, one by Ms. Jackson-Lee and one by Ms. Waters.

1. Amendment offered by Rep. Conyers:

> Description of amendment: The amendment would set forth requirements for notice to employees before a manufacturer or seller sends work outside the United States, and would exempt such companies from protection under this bill if the requirements are not met.

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[22] 439 U.S. 59, 87–88 (1978) (upholding Price-Anderson Act which, inter alia, capped liability at federally supervised nuclear power plants and mandated waiver of defenses in event of nuclear accident).

[23] *See Tull* v. *United States* where the Seventh Amendment was found not to apply to the statutory civil penalty caps in the Clean Water Act, 481 U.S. 412 (1987), since the assessment of civil penalties involved neither the "'substance of a common-law right to a trial by jury' nor a 'fundamental element of a jury trial." On the other hand, in the 1935 case *Dimick* v. *Schiedt,* 293 U.S. 474 (1935), the Court found unconstitutional the Federal practice of additur, because increasing the amount of a jury award was a question of "fact" protected by the Seventh Amendment.

[24] *See e.g., Lankford* v. *Sullivan, Long & Hagarty,* 416 So.2d. 996 (Ala. 1982), *Hazine* v. *Montgomery Elevator Co.* 861 P.2d 625 (Ariz. 1993), *Heath* v. *Sears, Roebuck & Co.,* 464 A.2d 288 (N.H. 1983). Other states throwing out statute of repose laws include Kentucky, North Dakota, Rhode Island, South Dakota, and Utah.

The amendment was defeated by a vote of 12 to 16. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Jackson-Lee, Waters, Meehan, Schiff, Sanchez, Van Hollen, and Wasserman Schultz. Nays: Representatives Coble, Smith, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Hostettler, Inglis, Green, Forbes, King, Feeney, Franks, Gohmert, and Sensenbrenner.

2. Amendment offered by Rep. Scott:

Description of amendment: The amendment would exempt from the bill's purview any action arising from the defendant's "willfull, reckless, or wanton disregard for life or property."

The amendment was defeated by a vote of 14 to 15. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson-Lee, Waters, Meehan, Weiner, Schiff, Sanchez, Van Hollen, and Wasserman Schultz. Nays: Representatives Coble, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Hostettler, Inglis, Green, Keller, Forbes, King, Feeney, Franks, and Sensenbrenner.

3. Amendment offered by Rep. Schiff:

Description of amendment: The amendment would exempt from the bill's purview a civil action against a manufacturer or seller of a durable good who "fraudulently concealed a defect in the durable good."

The amendment was agreed to by voice vote.

4. Amendment offered by Rep. Scott:

Description of amendment: The amendment would preempt any state law that establishes a statute of repose for a period less than 12 years. It would also clarify that the bill does not preempt any state law that prohibits a statute of repose or impose a statute of repose on states that do not have such statutes already in place.

The amendment was defeated by voice vote.

5. Amendment offered by Rep. Scott:

Description of amendment: The amendment would change the statute of repose in the bill from a term of 12 years to 18 years.

The amendment was defeated by voice vote.

6. Amendment offered by Ms. Jackson-Lee:

Description of amendment: The amendment would exempt from the bill's purview a civil action against a manufacturer or seller that "on or after the date of the enactment of this Act, does not pay its employees a minimum wage of at least $7.25 per hour."

The amendment was defeated by a vote of 14 to 20. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson-Lee, Waters, Meehan, Wexler, Weiner, Schiff, Sanchez, and Wasserman Schultz. Nays: Representatives Coble, Smith, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Bachus, Hostettler, Inglis, Kel-

ler, Issa, Forbes, King, Feeney, Franks, Pence, Gohmert, and Sensenbrenner.

7. Amendment offered by Ms. Waters:

Description of amendment: The amendment would exempt from the bill's purview any action arising "out of an accident involving a durable good if the use of such durable good by the claimant is required by the claimant's employer."

The amendment was defeated by a vote of 15 to 20. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson-Lee, Waters, Meehan, Wexler, Weiner, Schiff, Sanchez, Van Hollen, and Wasserman Schultz. Nays: Representatives Coble, Gallegly, Goodlatte, Chabot, Lungren, Jenkins, Cannon, Bachus, Hostettler, Inglis, Green, Keller, Issa, Forbes, King, Feeney, Franks, Pence, Gohmert, and Sensenbrenner.

8. Amendment offered by Mr. Scott:

Description of amendment: The amendment would exempt from the bill's purview any action arising "out of an accident involving a durable good that has a normal life expectancy of more than 12 years."

The amendment was defeated by voice vote.

9. Amendment offered by Mr. Scott:

Description of amendment: The amendment would strike paragraph (a)(1) from Section 2, thereby allowing actions for damage to property regardless of whether the accident occurred more than 12 years after the date on which the durable good was delivered.

The amendment was defeated by voice vote.

JOHN CONYERS, Jr.
BOBBY SCOTT.
ZOE LOFGREN.
BILL DELAHUNT.
SHEILA JACKSON-LEE.
MARTIN MEEHAN.

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